

THIRD DIVISION

[G.R. No. 193134, March 02, 2016]

**RAFAEL NADYAHAN, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

R E S O L U T I O N

PEREZ, J.:

For review is the Decision^[1] of the Court of Appeals dated 17 December 2009 affirming the Judgment^[2] dated 5 February 2008 of the Regional Trial Court (RTC), Branch 34 of Lagawe, Ifugao finding petitioner Rafael Nadyahan guilty beyond reasonable doubt of homicide.

In an Information^[3] filed by the Assistant Provincial Prosecutor on 2 July 2004, petitioner was charged with homicide, thus:

That on or about the evening of May 26, 2004, at Banaue, Ifugao and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife and with intent to kill DID then and there willfully, unlawfully, and feloniously attack and stab one Mark Anthony D. Pagaddut inflicting multiple stab wounds on his body that caused his death thereafter.

When arraigned, petitioner pleaded not guilty to the charge.

The defense manifested at pre-trial that while petitioner indeed stabbed the victim, he did so in self-defense. For this reason, a reverse trial, upon agreement of the parties, was conducted with the defense presenting its evidence first.

The defense presented petitioner himself as its principal witness and a certain Pedro Binwag who sought to corroborate the latter's statement.

Their version goes:

In the evening of 26 May 2004, petitioner was driving his motorcycle on the way to Poblacion with Mark Apilis at his back. As they reached the marker of the junction road going to Bontoc, they were flagged down by Marcial Acangan (Acangan), who was then accompanied by Elias Nabejet (Nabejet), Moreno Binwag (Binwag) and Mark Pagaddut (Pagaddut). Acangan asked petitioner for a ride home and the latter readily obliged. Acangan further asked that they be treated to a drink. Petitioner refused and explained that he had already spent his last money on drinks earlier in the day. This angered Acangan. He slapped petitioner on the forehead and kicked his foot. Petitioner did not back down. Instead, he got off his motorcycle and prepared to fight Acangan. At that instance, he saw Acangan's companions pick up pieces of wood. Petitioner then ran towards Apilis and instructed the latter to start

the engine of the motorcycle. Before petitioner could leave, he was struck on the back with a piece of wood by Nabejet. Petitioner impulsively took his knife from the windshield of the motorcycle and ran to the direction of his house. Acangan's group followed him. Upon reaching the parking area of the KMS Line, petitioner was met by Binwag. Petitioner even managed to ask Binwag why his group was ganging up on him when he was hit by Pagaddut with a belt buckle. As petitioner was starting to lose consciousness, he thrust his knife and stabbed Pagaddut before both of them fell down. Petitioner then got up, wiped his face and prepared to go home. Fie met Apilis who was driving his motorcycle. Apilis refused to go with him so petitioner drove the motorcycle away and proceeded towards the house of a congressman. Petitioner then spent four days in Barangay O-ong before going to San Jose City in Nueva Ecija to have his wounds treated. Finally, he went back to Ifugao to surrender.^[4]

Pedro Binwag witnessed a commotion while he was waiting for a jeepney near the junction road. He saw one person armed with a knife and running towards Bontoc while he was being chased by two men. The person holding a knife was eventually cornered by three men and he was struck in the head by a club. While he was about to fall down, he was bumped by another man holding a swinging object, causing the latter to fall. Sensing danger, Pedro Binwag immediately left the area.^[5]

Petitioner presented a medical certificate^[6] issued by the hospital in San Jose City to prove that he suffered a lacerated wound on his forehead.

The prosecution presented Acangan and Nabejet whose version portrayed petitioner as the aggressor. Acangan narrated that he and Pagaddut had just come from Viewer's Live Band located at the market where they had a few drinks. Pagaddut went inside the cab of a tricycle with Acangan as driver. While Acangan was about to start the engine, petitioner and Apilis, who were riding a motorcycle, approach them. After saying that he has no problem with Pagaddut, petitioner suddenly wielded a knife. Acangan ran and petitioner chased him around the tricycle. Pagaddut alighted from the tricycle cab and tried to start the motorcycle engine. When petitioner saw Pagaddut, he kicked the latter in the chest. Petitioner turned his ire on Pagaddut and stabbed his upper right buttock. Nabejet came and tried to hit petitioner with a piece of wood but he missed. Petitioner, in turn chased Nabejet. Acangan followed them and upon reaching the station of the KMS Line, he saw petitioner pull the knife from Pagaddut's body. Acangan brought Pagaddut to the hospital. Pagaddut expired at the hospital.^[7]

Nabejet recounted that he had just come from a wake and was near Viewer's Live Band when he saw petitioner, who was armed with a knife, standing near Pagaddut. He took a piece of wood nearby and approached Pagaddut. He then saw petitioner chase Pagaddut. He saw petitioner stab Pagaddut in the back causing the latter to fall down. Petitioner continued stabbing Pagaddut but the latter was able to parry the blows. Nabejet tried to hit petitioner with a piece of wood but he missed. Petitioner turned his attention to Nabejet and chased him. Nabejet was able to escape.^[8]

According to the Certificate of Death, Pagaddut sustained the following injuries:

1. Multiple Stab Wounds, Penetrating, perforating

- a. Right infraclavicular, 7 cm
 - b. Right anterior axillary fold, 5 cm
2. Stab wound, penetrating 3 cm. base of neck right
3. Stab wound, lateral aspect upper arm, 2 cm.^[9]

Dr. Antonio Ligot testified that the victim had three stab wounds: 1) one was perforating and penetrating wound on the anterior chest wall on the right side; 2) other is perforating and penetrating stab wound at the base of the right side of the neck; and 3) one was a stab wound on the right upper arm.^[10]

Finding an incomplete self-defense, the trial court found petitioner guilty beyond reasonable doubt of homicide. The dispositive portion reads:

WHEREFORE, there being an incomplete self-defense, ACCUSED, Rafael Nadyahan is found **GUILTY** beyond reasonable doubt of Homicide. Pursuant to Article 69 of the Revised Penal Code and applying the Indeterminate Sentence Law, he is hereby sentenced to suffer the penalty of imprisonment of four (4) years and two (2) months of prison correccional medium, as minimum, to eight (8) years of prison mayor minimum, as maximum. He is likewise ordered to pay the heirs of the victim, Mark Anthony D. Pagaddut, the amount of Fifty Thousand (P50,000.00) Pesos as civil indemnity.^[11]

The trial court lent credence to the version of the defense that petitioner is not the aggressor. However, the trial court found that there is an incomplete self-defense on the part of petitioner. Particularly, the trial court ruled that based on the wounds sustained by the victim, the means used by petitioner to prevent or repel the attack was not reasonable. In the imposition of penalty, the trial court considered incomplete self-defense as a privileged mitigating circumstance and voluntary surrender as an ordinary mitigating circumstance.

On 17 December 2009, the appellate court rendered its decision affirming petitioner's conviction.

Petitioner maintains that the court a quo gravely erred: (1) in ruling that there is an incomplete self-defense; and (2) in sustaining the penalty imposed by the trial court without considering the circumstances favorable to accused.^[12]

In its Comment,^[13] the Office of the Solicitor-General (OSG) defends the ruling of the appellate court that there is incomplete self-defense. However, the OSG recommends the modification of the penalty to arresto mayor in its medium period to prison correccional minimum.

Case law has established that in invoking self-defense, whether complete or incomplete, the *onus probandi* is shifted to the accused to prove by clear and convincing evidence all the elements of the justifying circumstance, namely: (a) unlawful aggression on the part of the victim; (b) the 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.^[14]

We agree with the trial court that there was unlawful aggression on the part of the victim and lack of sufficient provocation on the part of petitioner. We quote the pertinent portion of the decision of the trial court:

After a thorough evaluation of the evidence and testimonies from both parties, the court gives more weight to the account that the accused was not the aggressor. His narration that Marcial Acangan requested him to take Marcial Acangan home was supported by the statement in the affidavit of Marcial where the accused said "MUD PROBLEMA INE TE BARKADA HI MARCIAL' (THERE IS NO PROBLEM WITH THAT BECAUSE MARCIAL IS A FRIEND). The records do not disclose previous conversation in Marcial's affidavit to which accused replied with such a statement but it jibes with the account of the accused that Marcial requested him to take the latter home. It is illogical that after saying that, accused alighted from the motorcycle and chased his friend with a knife without any provocation. There was also no mention in Marcial's affidavit that accused kicked and stabbed the victim. He narrated it in his oral testimony because it was in the affidavit of the other witnesses. We must bear in mind that Martial was the companion of the victim as early as when they were inside Viewer's Live Band and was continuously in close proximity with the victim until the chase started so it is improbable that he did not mention such incident to the police if it indeed happened. As to the testimony of the other witness for the prosecution, Eleazar Nabejet, he was presented to prove lack of sufficient provocation on the part of the victim yet in his testimony he never mentioned any kicking incident. It is most likely that he arrived late at the scene to have witnessed the beginning of the altercation and without personal knowledge to judge who the aggressor was. He does not even have an accurate grasp of the time of the incident relative to the time they left the house where the wake was, saying that they left the house where the wake was, saying that they left about 9:00 o'clock and later saying that it was perhaps at 9:55 so that if they reached the road it was 10:00 o'clock. Finally Dr. Ligot stated in his testimony that there was no stab wound on the lower back portion of the victim, and that the injuries sustained by the victim were frontal wounds. This will explain the fact why Martial Acangan, the first witness for the prosecution offered to answer when asked why he did not mention in his affidavit the stabbing incident in front of Viewer's Live Band. This testimony, supported with physical evidence impeaches the testimonies of the two earlier witnesses for the prosecution. With the inconsistencies of the testimonies of the witnesses for the prosecution, the court concludes that the oral testimony of Marcial Acangan is not credible and he adapted it from the story narrated by the other witnesses. With the foregoing, the court gives full credence to the testimony of the accused that he was not the aggressor.

Another factor which contributed to the failure of the cause of the prosecution is the fact that not one of the prosecution witnesses had seen the exchange of blows between the accused and the victim. The prosecution evidence failed to prove the details on how the stabbing took place that led to the death of the victim. In fact the first witness for the prosecution who was supposed to have seen the accused stab the victim and whose testimony will prove that the accused inflicted the fatal