

## THIRD DIVISION

**[ G.R. No. 181052, November 14, 2012 ]**

**RODOLFO BELBIS, JR. Y COMPETENTE AND ALBERTO BRUCALES,  
PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

This is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45, dated February 22, 2008, of Rodolfo Belbis, Jr. and Alberto Brucales that seeks to reverse and set aside the Decision<sup>[2]</sup> of the Court of Appeals (CA), dated August 17, 2007, and its Resolution dated January 4, 2008, affirming with modification the Decision<sup>[3]</sup> dated December 23, 2004 of the Regional Trial Court (RTC), Tabaco City, Albay, Branch 17, finding petitioner guilty beyond reasonable doubt of the crime of Homicide.

The factual antecedents follow.

Jose Bahillo (Jose), the victim, was a Barangay Tanod of Sitio Bano, Barangay Naga, Tiwi, Albay. Around 9:00 p.m. of December 9, 1997, Jose left his house and proceeded to the area assigned to him. Later on, around 10:00 p.m., Veronica Dacir (Veronica), Jose's live-in partner, heard Jose shouting and calling her name and went to where Jose was and saw blood at his back and shorts. It was there that Jose told Veronica that he was held by Boboy (petitioner Alberto Brucales), while Paul (petitioner Rodolfo Belbis, Jr.) stabbed him. Jose was taken to St. Claire Medical Clinic at Tiwi, Albay, about four kilometers from Barangay Naga where he was initially attended by Dr. Bernardo Corral (Dr. Corral). Jose was later referred to Ziga Memorial District Hospital at Tabaco, Albay and, thereafter, was referred to Albay Provincial Hospital on December 10, 1997 at 2:00 a.m. He was confined therein for six (6) days. Dr. Sancho Reduta (Dr. Reduta), his attending physician, issued a medical certificate, which stated the following wounds found on Jose's body: (1) stab wound, 3 cm., lumbar area, right; (2) stab wound, 3 cm., lumbar area, left; (3) stab wound, 3 cm., left buttock, medial aspect; and (4) stab wound, 3 cm., left buttock, lateral aspect. He was also found positive for alcoholic breath, his blood level was monitored and was given I.V. (intravenous) fluids and antibiotics. He was finally discharged on December 15, 1997. Dr. Reduta issued Jose prescriptions and instructed the latter to go back to the hospital after the medicines prescribed are consumed. Jose remained bedridden and should have returned to the hospital on December 22, 1997, but failed to do so due to financial constraints. During that time, the wounds of Jose were not yet fully healed.

Veronica brought Jose back to St. Claire Medical Clinic on January 1, 1998, because the latter was complaining of urinary retention and pains in his left and right lumbar regions. Dr. Corral suspected that Jose had septicemia; thus, he was given I.V. fluids, antibiotics and diuretics, and a catheter was used to relieve Jose of urinary retention. Upon Jose's request, he was discharged on January 3, 1998. He was

brought back to the same hospital on January 7, 1998 and was diagnosed by Dr. Corral as having advanced Pyelonephritis, his kidney was inflamed and with pus formation and scarring. Around 10:30 a.m. on January 8, 1998, SPO1 Lerma Bataller of the Philippine National Police-Tiwi went to the hospital to secure Jose's ante-mortem statement. Later, in the afternoon of the same day, Jose was brought to the clinic of Dr. Marilou Compuesto upon the advice of Dr. Corral where he underwent ultrasound scanning. It was found that Jose's kidney had acute inflammation due to infection. He was returned to St. Claire Medical Clinic and was advised to go to Manila. However, Jose died at 10:00 p.m. of the same day.

Dr. Corral issued a Death Certificate which shows the following:

- a) Immediate cause – Uremia, secondary to renal shutdown
- b) Antecedent cause – Septicemia, renal inflammatory disease.

Dr. Wilson Moll Lee, Medical Officer III of the National Bureau of Investigation (NBI) of Naga City, Region V, conducted an autopsy on the victim's cadaver on January 14, 1998 and issued Autopsy Report No. BRO No. 98-02, which indicated multiple organ failure as the cause of the victim's death. Thus, petitioners were charged with the crime of homicide. The Information reads:

That on or about the 9<sup>th</sup> day of December 1997, at about 10:30 o'clock in the evening, more or less, at Barangay Naga, Municipality of Tiwi, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, conspiring, confederating and helping one another, did then and there willfully, unlawfully, and feloniously assault, attack, and stab JOSE BAHILLO, thereby inflicting upon the latter stab wounds which caused his death on January 8, 1998, to the damage and prejudice of the latter's heirs.

CONTRARY TO LAW.

On February 17, 1999, petitioners entered a plea of not guilty. Thereafter, trial on the merits ensued.

The prosecution presented documentary evidence as well as the testimonies of Dr. Marilou Compuesto, Dr. Sancho Reduta, Dr. Bernardo Corral, Dr. Wilson Moll Lee, SPO1 Lerma Bataller and Calixto Dacullo.

Petitioners claimed that they are entitled to the justifying circumstance of self-defense. Through the testimonies of petitioners, Dr. Olga Bausa and Dr. Edwin Lino Romano, their version of the incident is as follows:

Around 10:00 p.m. of December 9, 1997, petitioners were outside a store in Naga, Tiwi, Albay, engaged in a conversation with other people when Jose went to them and told them to go home. While on their way home, they heard Jose's whistle go off as the latter was following them. Petitioner Rodolfo asked Jose what is the matter and the latter replied, "What about?" Suddenly, Jose thrust a nightstick on petitioner Rodolfo, but the latter was able to evade it. Afterwards, Jose held the

nightstick horizontally with both hands and tried to hit petitioner Rodolfo's forehead. Petitioner Rodolfo held the nightstick which was in reality, a bolo sheathed on a scabbard. Jose pulled the bolo inside and the wooden scabbard was detached from it, thus, the blade thereof injured his left hand. Petitioner Rodolfo kept holding the wooden scabbard and when Jose thrust the bolo to petitioner Rodolfo, the latter parried it with the wooden scabbard he was holding. Petitioner Rodolfo managed to take the bolo away from Jose and, thereafter, the latter embraced petitioner Rodolfo while trying to get the bolo back. Petitioner Rodolfo held the bolo with his right hand and swung it away from Jose. Thereafter, Jose pushed petitioner Rodolfo causing the bolo to slip from the latter's hand. Jose tried to pick the bolo up, but petitioner Rodolfo was able to hold it first, thus, Jose stepped back. During that commotion, petitioner Alberto was only watching and told Jose and petitioner Rodolfo to stop fighting.

Thereafter, petitioner Alberto accompanied petitioner Rodolfo to the latter's house because he suffered a hand injury. Petitioner Rodolfo was then brought to Tabaco General Hospital before he was referred to Albay Provincial Hospital. Dr. Reduta sutured the top layer of his wound and the following day, he went back to Tabaco General Hospital where he was operated on his left hand injury by Dr. Romano.

Petitioner Rodolfo brought the bolo used in the incident with him in his house and reported the matter to the police station of Tiwi and surrendered the same bolo to the police authorities.

The RTC convicted the petitioners of the crime charged against them, but appreciated the mitigating circumstance of incomplete self-defense. The dispositive portion of the decision follows:

WHEREFORE, premises considered, the accused Rodolfo Belbis, Jr. and Alberto Brucales are found guilty beyond reasonable doubt for the death of Jose Bahillo. Considering the privileged mitigating circumstance of incomplete self-defense in their favor, and applying the Indeterminate Sentence Law, they are hereby sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum, and to pay the heirs of Jose Bahillo the amounts of P50,000.00 as civil indemnity and P50,000.00 as moral damages.

Costs against the accused.

SO ORDERED.<sup>[4]</sup>

After the denial of their motion for reconsideration, the petitioners elevated the case to the CA. However, the latter denied their appeal and affirmed the RTC decision with modification that there was no mitigating circumstance of incomplete self-defense. The decretal portion of the decision reads:

WHEREFORE, the decision dated 23 December 2004 of the Regional Trial Court of Tabaco City, Albay, Branch 17 is hereby AFFIRMED with

MODIFICATION as to the penalty imposed. Accused-appellants Rodolfo C. Belbis, Jr. and Alberto Brucales are sentenced to suffer the indeterminate sentence of six (6) years and one (1) day of *prision mayor* as minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum.

Costs *de oficio*.

SO ORDERED.<sup>[5]</sup>

Petitioners' motion for reconsideration was denied. Hence, the present petition.

Raised are the following issues:

#### I

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT THE STATEMENTS MADE BY THE VICTIM TO VERONICA DACIR, ONE MONTH PRIOR TO THE VICTIM'S DEATH. CONSTITUTES A DYING DECLARATION WITHIN THE CONTEMPLATION OF SECTION 37, RULE 130 OF THE RULES OF COURT?

#### II

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT PETITIONERS-APPELLANTS ARE NOT ENTITLED TO THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE AND THE MITIGATING CIRCUMSTANCE OF INCOMPLETE SELF-DEFENSE?

#### III

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT THE STAB WOUNDS WERE THE PROXIMATE CAUSE OF THE VICTIM'S DEATH?

#### IV

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER IS NOT PRESENT IN THE CASE AT BAR?<sup>[6]</sup>

The petition lacks merit.

In a criminal case, factual findings of the trial court are generally accorded great weight and respect on appeal, especially when such findings are supported by substantial evidence on record.<sup>[7]</sup> This rule, however, is not without exceptions, one of which is when there is a conflict between the factual findings of the Court of Appeals and the trial court which necessitates a review of such factual findings.<sup>[8]</sup>

Petitioners claim that there is discrepancy in the findings of the RTC and the CA.

According to them, the RTC never mentioned about a dying declaration which the CA discussed in its decision. They then argue that the CA erred in ruling that the statements made by the victim in the presence of witnesses Veronica Dacir right after being stabbed, and SPO1 Lerma Bataller before he died, are dying declarations within the contemplation of the law as the victim still lived for one month after the said dying declaration was made.

A dying declaration is a statement made by the victim of homicide, referring to the material facts which concern the cause and circumstances of the killing and which is uttered under a fixed belief that death is impending and is certain to follow immediately, or in a very short time, without an opportunity of retraction and in the absence of all hopes of recovery. In other words, it is a statement made by a person after a mortal wound has been inflicted, under a belief that death is certain, stating the facts concerning the cause and circumstances surrounding his/her death.

[9]

As an exception to the hearsay rule, the requisites for its admissibility are as follows: (1) the declaration is made by the deceased under the consciousness of his impending death; (2) the deceased was at the time competent as a witness; (3) the declaration concerns the cause and surrounding circumstances of the declarant's death; and (4) the declaration is offered in a criminal case wherein the declarant's death is the subject of inquiry.[10]

The fact that the victim was stabbed on December 9, 1997 and died only on January 8, 1998 does not prove that the victim made the statement or declaration under the consciousness of an impending death. The rule is that, in order to make a dying declaration admissible, a fixed belief in inevitable and imminent death must be entered by the declarant. It is the belief in impending death and not the rapid succession of death in point of fact that renders the dying declaration admissible. It is not necessary that the approaching death be presaged by the personal feelings of the deceased. The test is whether the declarant has abandoned all hopes of survival and looked on death as certainly impending.[11] As such, the CA incorrectly ruled that there were dying declarations.

The CA should have admitted the statement made by the victim to Veronica Dacir right after he was stabbed as part of the *res gestae* and not a dying declaration. Section 42 of Rule 130 of the Rules of Court, reads as follows:

Sec. 42. *Part of the res gestae.* - Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*. So also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*.

All that is required for the admissibility of a given statement as part of the *res gestae*, is that it be made under the influence of a startling event witnessed by the person who made the declaration before he had time to think and make up a story, or to concoct or contrive a falsehood, or to fabricate an account, and without any undue influence in obtaining it, aside from referring to the event in question or its