

SECOND DIVISION

[G.R. No. 183566, May 08, 2009]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BONIFACIO BADRIAGO, ** ACCUSED-APPELLANT.**

DECISION

VELASCO JR., J.:

On automatic review is the Decision dated April 22, 2008 of the Court of Appeals (CA) in CA G.R. CR-H.C. No. 00129, which found accused-appellant Bonifacio Badriago guilty of Frustrated Homicide in Criminal Case No. 4255 and Murder in Criminal Case No. 4276.

The Facts

Accused-appellant was charged before the Regional Trial Court (RTC) under the following Informations:

Criminal Case No. 4255

That on or about the 13th day of September 2002 in the Municipality of Carigara, [P]rovince of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and hack one ADRIAN QUINTO, with the use of a long sharp bolo (sundang) which the accused had provided himself for the purpose, thereby inflicting upon the latter the following wounds, to wit:

SURGERY NOTES:

- (+) hacked wounds transverse approximately 16 cms.
Linear (L) lumbar area level of L-L5
- (+) hacked wound (L) forearm.

ORTHO NOTES:

A) Near amputation M/3rd (L) forearm 2ĚĚ to hack wound.

DIAGNOSIS:

- Hack wound 15 cms. oblique level of L₂ posterior lumbar area, transecting underlying muscle.
- Fracture both radius and ulna.

OPERATION: September 14, 2002.

- Wound Debridement and Repair
- ORIF (Pinning)

Which wounds required a period of from thirty (30) days to ninety (90) days to heal and incapacitated said offended party from performing his

habitual work for the same period of time; thus the accused performed all the acts of execution which [would] have produced the crime of Homicide as a consequence thereof, but nevertheless did not produce it by reason or causes independent of the will of the accused, that is the timely and able medical assistance rendered to the said Adrian Quinto which prevented his death.

CONTRARY TO LAW.

Criminal Case No. 4276

That on or about the 13th day of September, 2002, in the Municipality of Carigara, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab one OLIVER QUINTO with the use of a long sharp bolo (sundang) which the accused had provided himself for the purpose, thereby inflicting upon the latter the following wounds, to wit:

1. [Stab] wound 4 cm. x 1.5 cm. x 16 cm. (L) ant. chest at the level of 5th ICS along the (L) ICL;
2. [Stab] wound 6.5 x 3 cm. x 22 cm. (L) ant. chest at the level of 6th ICS along (L) anterior AAL;
3. [Stab] wound 3.5 cm. x 1.5 x 2 cm., (L) arm proximal 3rd lateral aspect;
4. Amputating wound (L) 3rd, 4th and 5th finger;
5. [Stab] wound 5 cm. x 3.5 cm. x 6 cm. umbilical area with intestinal and omental prolapsed;
6. Hacking wound 9 cm. x 2 cm. (L) occipital area with skull fracture;
7. [Stab] wound 3 cm. x 1 cm. x 15 cm. (L) posterior back at the level of T 12, 3 cm. away from vertebral line;
8. [Stab] wound 2 cm. x 1 cm. x 9 cm. (L) posterior back 8 cm. away from vertebral line;
9. Hacking wound 11 cm. x 2 cm. x 9 cm. (L) posterior iliac with fracture of hip bone;
10. [Stab] wound 3 cm. x 2 cm. x 3 cm. (L) buttocks;
11. [Stab] wound 5.5 cm. x 1.5 cm. x 2.5 cm. lumbar area along the vertebral line.

which wounds caused the death of said Oliver Quinto.

CONTRARY TO LAW.^[1]

Upon arraignment, accused-appellant pleaded not guilty to both charges. The parties later agreed to try the case jointly. During trial, the prosecution presented the following witnesses: Dr. Ma. Bella Profetana, Adrian Quinto, Dr. Frederic Joseph Asanza, and Victoriano Quinto. The defense witnesses consisted of accused-appellant and Rodolfo Gabon.

The prosecution's presentation of evidence is summarized as follows: Adrian

testified that on the morning of September 13, 2002, he was asked by his mother to bring a letter to one Berting Bello at *Barangay* Guindapunan, Leyte. He drove a tricycle to deliver the letter along with his younger brother, Oliver. After finishing the errand they headed back to the town plaza where their mother was waiting for them. Before they could reach their destination, however, they were approached by accused-appellant at *Sitio* Mombon in Carigara. Accused-appellant then suddenly hacked him with a *sundang* or long bolo on his lumbar area.^[2] Accused-appellant aimed a second time but Adrian was able to somehow shield himself. His lower left arm suffered a hack wound as a result. Struck with panic, he jumped off the tricycle but could not run away. He was able to push Oliver off the tricycle so he could run away and call for help. He could no longer testify on what happened thereafter as he lost consciousness and only woke up while confined at Carigara District Hospital. His mother later informed him that Oliver was also attacked and did not survive.

Dr. Asanza's testimony showed that Adrian suffered from two wounds that could have been fatal: the hack wound on the lumbar area and on his left arm. He explained that Adrian could have died had he not been brought to the hospital. When cross-examined, he stated that there was a possibility that Adrian could still crawl or walk despite the infliction of the wound on the lumbar area. He also testified that it was possible that Adrian was first hit on the forearm as he was facing accused-appellant and that he could have been hit on the lumbar area while he was running.^[3]

Dr. Profetana told the court that her post-mortem examination of Oliver showed that eight of the 11 wounds inflicted on him were fatal. She identified hypovolemic shock as Oliver's cause of death. Furthermore, she stated that it was impossible for the victim to have survived the wounds as these severed the blood vessels and caused hemorrhage.^[4]

Victoriano, father of the victims, testified that his family incurred PhP 20,000 in expenses for the stainless bar placed on Adrian's injured arm. According to his estimate, they spent about PhP 50,000 for Adrian's two-month hospitalization but they were not able to keep the receipts. For the death of his other son, Oliver, they spent PhP 9,000 for the coffin and about PhP 10,000 for the wake. He likewise testified that if his family's losses could be quantified they would claim the amount of PhP 100,000.^[5]

In his defense, accused-appellant stated under oath that on the morning of September 13, 2002, he was on his pedicab looking for passengers. While he was on his way to the bus terminal in Carigara, Leyte, he was accosted by Adrian and Oliver, who carried stones with them. Adrian called out to him, "Now Boning, let us fight." He tried to speed away but the two chased him, with Adrian driving his pedicab and Oliver standing on the cargo compartment. They bumped accused-appellant's pedicab, causing him to swerve to the middle of the road.^[6] When accused-appellant looked back, Adrian got out of his pedicab and approached him with a knife about 10 inches long. Seeing Adrian was about to stab him, he grabbed a bolo from his pedicab's passenger seat and used it to strike at Adrian, injuring his left hand. Adrian's knife fell and when he bent to pick it up, accused-appellant again hacked at him with his bolo. Adrian then managed to run away from accused-appellant and head towards *Barangay* Guindapunan. Accused-appellant, meanwhile, ran towards the municipal building to inform the police that he had injured

someone. He denied killing Oliver as while he was fighting with Adrian he did not even see Oliver.^[7]

When cross-examined accused-appellant admitted that he did not suffer any injury following the confrontation with Adrian. He claimed not to know what happened to Oliver.

The other defense witness, Rodolfo, testified that he knew accused-appellant as a pedicab driver. On the day of the incident he saw two pedicabs engaged in a chase. He noticed that accused-appellant was in one pedicab and he was being chased by the pedicab driven by Adrian. The bumper of accused-appellant's pedicab was bumped by Adrian's pedicab. From a distance of about four arms' length, he saw the two go down from their respective pedicabs. Adrian said "let's have a fight" while drawing a short bolo from his waist. Adrian tried to stab accused-appellant but was unable to hit him. He then saw accused-appellant draw his own *bolo* from his waist and hit the left arm of Adrian. Adrian's bolo fell to the ground and when he was about to pick it up he was again hit by accused-appellant.

On cross-examination, Rodolfo stated that he had not seen if Adrian had a passenger on board his pedicab, and that the incident occurred along a national road with many houses and shrubbery.^[8]

On July 29, 2004, the RTC rendered its judgment. Accused-appellant was found guilty of the crimes charged. The *fallo* of the Decision is as follows:

WHEREFORE, premises considered, with the aggravating circumstance of treachery, the Court [finds] accused BONIFACIO BARDIAGO, GUILTY beyond reasonable doubt of the crime of FRUSTRATED MURDER instead of Frustrated Homicide in Criminal Case No. 4255, and [sentences him] to suffer an indeterminate penalty of SIX (6) YEARS and ONE (1) DAY OF Prision Mayor as Minimum to TWELVE (12) YEARS and one (1) DAY of Reclusion Temporal as Maximum, and to pay Adrian Quinto actual damages in the amount of Twenty Thousand (P20,000.00) Pesos and exemplary damages in the amount of Ten Thousand (P10,000.00) pesos.

Likewise, pursuant to Art. 248 of the Revised Penal Code as amended and further amended by R.A. No. 7659 (The Death Penalty Law) the Court found accused BONIFACIO BARDIAGO, GUILTY beyond reasonable doubt of the crime of MURDER charged under the information in Criminal Case No. 4276, and sentenced to suffer the maximum penalty of DEATH, and pay the heirs of Oliver Quinto civil indemnity in the amount of Seventy Five Thousand (P75,000.00) and exemplary damages in the amount of Twenty Five Thousand (P25,000.00) Pesos; and [to] pay the cost.

SO ORDERED.^[9]

On September 14, 2004, the records of the case were transferred to this Court on automatic review as the death penalty was involved. But conformably with *People v. Mateo*,^[10] the case was transferred to the CA via a Resolution dated February 15, 2005.

Accused-appellant, in his Brief filed before the CA, claimed that the trial court erred in convicting him of frustrated murder as what was read to him at his arraignment was a charge for frustrated homicide, and the trial court likewise erred in convicting him of frustrated murder and murder as his guilt was not proved beyond reasonable doubt. He also challenged the conviction on the ground that the mitigating circumstances of voluntary surrender, incomplete self-defense, and lack of intention to commit so grave a wrong were not appreciated by the trial court.

The CA sustained accused-appellant's first contention. It ruled that his conviction for frustrated murder was a gross violation of his constitutional right to be informed of the nature and the cause of accusation against him. Accused-appellant's other arguments, however, were not given merit. The CA noted the undisputed fact that it was accused-appellant, claiming self-defense, who inflicted the wounds sustained by Adrian and Oliver. The circumstantial evidence presented showed accused-appellant's culpability. Moreover, according to the CA, his choice of weapon and the areas he hacked on the victim's bodies revealed a clear intention to kill. The CA said he was able to injure the brothers with no injury caused to himself.

Lastly, the appellate court rejected the mitigating circumstances proffered by accused-appellant. It ruled that there was no voluntary surrender as accused-appellant himself testified that he had merely reported the injury and did not surrender. As to the self-defense theory, the CA stated that accused-appellant failed to establish the victims' unlawful aggression, a requisite in such a mitigating circumstance.

In view of Republic Act No. 9346 or *An Act Prohibiting the Imposition of Death*,^[11] the CA reduced accused-appellant's penalty to *reclusion perpetua* with respect to the murder charge in Criminal Case No. 4276.

The decretal portion of the CA Decision reads:

WHEREFORE, all the foregoing taken into account, the instant appeal is **partially granted**.

Accordingly, in Criminal Cases No. 4255 accused-appellant is found guilty only of **FRUSTRATED HOMICIDE** and is hereby penalized to suffer an indeterminate sentence of 2 years, 4 months and 1 day of prision correccional as minimum to 8 years and 1 day of prision mayor as maximum and to pay Adrian Quinto the sum of twenty five thousand pesos (P25,000.00) by way of temperate damages.

In criminal case no. 4276 accused-appellant is found guilty of **MURDER** and is hereby sentenced to *Reclusion Perpetua* and to pay the amount of fifty thousand pesos (Php50,000.00) as civil indemnity; twenty five thousand pesos (P25,000.00) by way of temperate damages, fifty thousand pesos (P50,000.00) as moral damages and twenty-five thousand pesos (P25,000.00) as exemplary damages.

With costs.

SO ORDERED.^[12]