

THIRD DIVISION

[G.R. NO. 155094, January 30, 2007]

**MANUEL O. ORIENTE, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

For review before the Court are the Decision^[1] dated February 14, 2002 of the Court of Appeals (CA) which affirmed the Decision of the Regional Trial Court of Quezon City, Branch 103 (RTC), dated November 15, 1999, in Criminal Case No. 96-65313, finding Manuel Oriente (petitioner) guilty of the crime of Homicide; and the CA Resolution^[2] dated September 9, 2002 which denied petitioner's Motion for Reconsideration.

An Information dated March 18, 1996 was filed with the RTC charging the petitioner with the crime of Murder, committed as follows:

That on or about the 16th day of March 1996, in Quezon City, Philippines, the said accused conspiring, confederating with three other persons whose true names and whereabouts have not as yet been ascertained and mutually helping one another, with intent to kill, qualified by evident premeditation and treachery, taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one ROMULO CARIÑO Y VALLO by then and there hitting him with a lead pipe on the different parts of his body thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of the victim.

CONTRARY TO LAW.^[3]

Upon arraignment, petitioner pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued.

The evidence presented by the parties, as summarized by the CA, are as follows:

The prosecution's version of the case is as follows:

On 16 March 1996, at around 10:00 o'clock in the evening, Arnel Tanael was on his way to the house of Romulo Cariño y Vallo at No. 40 Lukban Street, Area 9, Luzon Avenue, Brgy. Pasong Tamo, Tandang Sora, Quezon City. He passed in front of the house of [petitioner] Manuel Oriente and saw the latter and his companions having a drinking spree at the terrace of the [petitioner's] house. He arrived at Romulo's house where the

latter was drinking beer alone. Thereafter, Romulo went out of the house to buy cigarette. While watching television in the house of Romulo, Arnel Tanael heard two gunshots. Hence, he rushed outside the house to check on what the gunshots were all about.

Peeping through potted plants (about 3 feet high) perched on top of a neighbor's fence (about 2 feet high), and at a distance of more or less eight (8) meters, he saw Romulo Cariño, [petitioner] Manuel Oriente, the latter's daughter Marilou Lopez and the latter's husband, Paul Lopez and one Rogelio Gascon arguing along the alley beside the concrete fence in front of Manuel Oriente's house where there was a lighted fluorescent light. He heard Paul Lopez telling Romulo Cariño, "Ikaw Cariño, and liit-liit mo, and yabang mo!" Then Arnel Tanael saw Marilou coming out from their house with a lead pipe and handed it over to Paul. Paul then hit Romulo with a lead pipe at his right arm. Accused-appellant got the lead pipe from Paul and hit Romulo on his left eyebrow. Romulo reeled and fell down. Upon seeing Romulo fall down, Arnel got confused, hence, he went back inside the house and switched off the light and turned the television off. He went outside again and saw Romulo moaning. At this point, Paul Lopez was already poking a gun at Romulo, then pulled the trigger twice but the gun did not fire. Arnel then shouted, "Putang ina ninyo, bakit niyo ginagawa iyan sa bayaw ko, bakit ninyo ginaganito siya, ano ba ang kasalanan niya sa inyo." Oriente and his company did not say anything. Arnel carried Romulo and brought the latter inside the house. He called up Mario at the Panabuilt Transport office to get a cab. When the cab arrived, Romulo Cariño was brought by Arnel to the East Avenue Medical Center where Romulo, two hours after, passed away.

Dr. Roberto Garcia, the NBI Medico-Legal Officer who conducted the post-mortem examination on the victim's cadaver declared that the cause of death of Romulo Cariño was traumatic head injury. He opined that even with immediate and adequate medical attendance, the victim would not have survived due to the extensive nature of hemorrhage suffered by Romulo.

In an attempt to exculpate [the petitioner], the defense gave the following version:

On the night of the commission of the crime, [petitioner] Manuel Oriente was fetched by Tanod members in their area to attend a wake. It was already the Tanods' off-duty. While he was on his way out of the house, he saw spouses Paul and Malou and his granddaughter inside the car going out of the garage. The three went to visit Malou's in-laws.

At the gate of his house, while having a conversation with the Tanod members who fetched him, they heard two gunshots coming from downhill. They noticed that the person who fired the shots was walking towards them. They waited for him to pass by. This person was Romulo Cariño. When the latter reached a store, which is a fence away from Oriente's house, the latter asked Romulo what was his problem. Suddenly, Cariño extended his arms and poked [his] gun to Oriente and his companions. Romulo told them not to get near him or he will shoot

and kill all of them. Surprised by the victim's response and for fear of being shot, [petitioner] Oriente stepped back towards his yard and was able to take hold of a piece of wood and hit Romulo. [Petitioner] Oriente mentioned that he does not know if he hit Cariño's hands, eyebrow and other parts of his body with that single blow but he saw Romulo Cariño lose his balance, fall and hit his head on the ground. The victim was still holding the gun. After five seconds, Romulo Cariño stood up and ran (pasuray-suray) towards the direction of his house. Fearing that Cariño will shoot them if they would go after him, [petitioner] Oriente told the Tanods that they will just attend to him the following day. [Petitioner] Oriente further testified that he had no intention of killing Cariño and that his purpose was only to disarm him.^[4]

The RTC rendered a Decision dated November 4, 1999 convicting the petitioner of the crime of Homicide. The dispositive portion of the Decision states:

ACCORDINGLY, the court renders judgment finding the accused MANUEL ORIENTE Y ORILLO GUILTY beyond reasonable doubt as Principal of the crime of HOMICIDE as defined and penalized by the Revised Penal Code with two (2) mitigating circumstances of lack of intent to commit so grave a wrong and sufficient provocation and so he is hereby sentenced to suffer a jail term of Six (6) Months of *Arresto Mayor* as minimum and Four Years and One (1) Day of *Prision Correccional* as maximum.

On the civil aspect, the accused Manuel Oriente y Orillo is ordered to pay the lawful heirs of the victim Romulo Carino y Orillo the sum of P41,500.00 as actual damages and P50,000.00 as indemnification damages.

Costs against the accused.

SO ORDERED.^[5]

However, on November 12, 1999, before the foregoing judgment became final and executory, the RTC issued an Order motu proprio setting aside the said judgment because of a mistake in the "judgment proper" and requiring both petitioner and his counsel to appear before the court on November 17, 1999.^[6]

On the latter date, the RTC promulgated its second Decision dated November 15, 1999, the dispositive portion of which states:

ACCORDINGLY, the court renders judgment finding the accused MANUEL ORIENTE y Orillo GUILTY beyond reasonable doubt as Principal of the crime of HOMICIDE as defined and penalized by the Revised Penal Code with two (2) mitigating circumstances of lack of intent to commit so grave a wrong and sufficient provocation and so, applying Article 64, paragraph 5, of the Revised Penal Code and also the Indeterminate Sentence Law, [the] accused is hereby sentenced to suffer an indeterminate jail term of **Four (4) Years, Two (2) Months and One (1) Day of Prision Correccional as minimum and Eight (8) Years and One (1) Day of Prision Mayor as maximum.**

On the civil aspect, the accused Manuel Oriente y Orillo is ordered to pay the lawful heirs of the victim Romulo Cariño y Vallo the sum of P41,500.00 as actual damages and P50,000.00 as indemnification damages.

Costs against the accused.

SO ORDERED.^[7] (Emphasis supplied)

The RTC found that the testimonies of the defense witnesses, including the petitioner, are incredible; that the victim suffered extensive head injuries; that the defense failed to show any imminent threat or danger to the life of the accused; that the accused has in his favor the mitigating circumstance of lack of intent to commit so grave a wrong under Article 4 of the Revised Penal Code; that there was sufficient provocation on the part of the victim since the incident was preceded by an intense argument, and, therefore, the provocation qualifies as another mitigating circumstance in favor of the petitioner; that treachery is not present since there was an altercation immediately preceding the incident; that the prosecution failed to prove the elements of evident premeditation; that there is no clear showing that the accused took advantage of superior strength; and, finally, that the prosecution duly proved actual damages amounting to P38,500.00 for the funeral services and P3,000.00 for the cemetery lot and religious services, while the other expenses were not supported by evidence.

The petitioner appealed to the CA. On February 14, 2002, the CA rendered its Decision, the dispositive portion of which states:

WHEREFORE, in view of the foregoing, the decision dated 4 November 1999 rendered by the trial court is hereby AFFIRMED with MODIFICATION that the penalty imposed is an indeterminate prison term 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 indemnify the heirs of the deceased Romulo Cariño y Vallo in the amount of Fifty Thousand (P50,000.00) Pesos.

SO ORDERED.^[8] (Emphasis supplied)

The CA held that there is no cogent reason to depart from the findings of the RTC convicting the petitioner; that, at most, the inconsistencies of prosecution witness Arnel Tanael refer to minor details only, which tend to strengthen, rather than weaken, his credibility, and, moreover, prove that his testimony was unrehearsed; that, all in all, the testimonies of the prosecution witnesses are highly credible; that the evaluation of the testimonies of the eyewitnesses by the RTC should be accorded great weight and respect; that the testimony of Tanael on the injuries inflicted on the victim is supported by the findings of the NBI medico-legal officer as stated in the post mortem report; that the detailed testimony of a witness in homicide cases acquires greater weight and credibility if it corresponds with the autopsy report; that the mere fact that the judge who penned the decision was not the same judge who heard the testimonies of the witnesses does not *ipso facto* render the decision erroneous, more so when the judgment appears to be fully supported by the evidence on record; that the alleged act of the victim poking the gun at the petitioner and his companions does not constitute unlawful aggression, an essential

requirement for self-defense, since the mere aiming of the gun and threat to kill merely constitute a threat or intimidating attitude which does not amount to an actual and unexpected attack or imminent danger thereof; and that the accused did not resist but went peacefully with the police authorities when the latter invited the petitioner to the station does not amount to voluntary surrender.

Finding that the RTC erred in finding that two mitigating circumstances were present, namely, lack of intent to commit so grave a wrong and sufficient provocation or threat on the part of the offended party immediately preceding the act, the CA modified the penalty imposed by the RTC. According to the CA, the extensive nature of the injuries as stated in the post-mortem findings negates the contention of the petitioner that he had no intention of killing the victim because his purpose was only to disarm him; and the provocation, if any, done by the victim was not immediate to the act of petitioner's beating the victim, since a certain Paul Lopez had already previously assaulted the victim, and, moreover, there was a sufficient interval of time between the provocation of the offended party and the commission of the crime by the petitioner.

Hence, herein petition for review raising the following assignment of errors:

A.

THE HON. COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT THAT THE ACCUSED IS GUILTY OF HOMICIDE ALTHOUGH IT WAS OBVIOUS THAT THE LOWER COURT FOUND OUT THAT THERE WAS NO INTENT ON THE PART OF THE PETITIONER TO COMMIT SAID CRIME AND THERE WAS NO PROVOCATION AT ALL ON HIS PART;

B.

THE HON. COURT OF APPEALS AND THE REGIONAL TRIAL COURT BELOW ERRED IN NOT APPRECIATING THAT THERE WAS AN UNLAWFUL AGGRESSION ON THE PART OF THE VICTIM, AND THE MEANS EMPLOYED BY PETITIONER TO PREVENT THE SAME WAS REASONABLE AND FALLS UNDER THE JUSTIFYING CIRCUMSTANCES OR SELF-DEFENSE;

C.

THE HON. COURT OF APPEALS AND THE LOWER COURT GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE LONE ALLEGED EYE WITNESS, WHEN SAID TESTIMONY HAS FULL OF INCONSISTENCIES; AND

D.

THE HON. COURT OF APPEALS HAS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION WHEN IT MODIFIED THE DECISION OF THE REGIONAL TRIAL COURT, INCREASING THE PENALTY THEREOF WITHOUT ANY DISCUSSION OR EXPLANATION IN THE DECISION ITSELF WHY SAID MODIFICATION OF PENALTY IS NECESSARY AND IN ACCORDANCE WITH LAW.