

SECOND DIVISION

[G.R. No. 147789, January 14, 2004]

**ALEXANDER P. RUGAS, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

CALLEJO, SR., J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court as amended, of the Decision^[1] of the Court of Appeals in CA-G.R. No. 23419 (CR) affirming with modification the decision^[2] of the Regional Trial Court of Romblon, Branch 81, in Criminal Case No. 2095.

The Antecedents

On December 11, 1997, the petitioner Alexander P. Rugas was charged with Frustrated Homicide in an Information, the accusatory portion of which reads:

That on or about the 16th day of September 1997, at around 9:00 o'clock in the evening, in barangay Taclobo, municipality of San Fernando, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab with a deadly weapon one GERBERTO RAFOL, inflicting upon the latter critical injuries in different parts of his body, which ordinarily would cause the death of said Gerberto D. Rafol, thus performing all the acts of execution which should have produced the felony of homicide, as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused and that is by the timely and able medical assistance rendered to the victim which prevented his death.

Contrary to law.^[3]

The petitioner was duly arraigned, assisted by counsel and entered a plea of not guilty.

The Case for the Prosecution

As synthesized by the trial court and adopted by the Court of Appeals, the prosecution was able to establish the following:

At around 9:00 o'clock in the evening of September 16, 1997, Herberto (or Gerberto) Rafol was conversing with Perla Perez in the street fronting the house of Anda Romano in barangay Taclobo, San Fernando, Romblon, when the accused Alexander P. Rugas, suddenly stabbed him at his left

thigh. He faced him to know who stabbed him but the accused stabbed him on his stomach. He ran and shouted for help. Somebody helped him in boarding him to a tricycle and he was brought to the hospital at Cajidiocan where Dr. Fermin M. Fatalla operated on him and issued the medico-legal certificate, dated September 25, 1977 (Exh. F) and he drew a sketch (Exh. G). Dr. Fatalla found a stab wound on the right upper quadrant of the abdomen, 3 cms. in length and about 4 to 5 cms. in depth penetrating the abdominal cavity as well as the right lobe of the liver. This was a fatal wound, involving as it did the liver, one of the vital organs of the body. The patient could die of severe hemorrhage if no surgical operation was done. And he immediately operated the patient upon arrival at the hospital. The second stab wound was 7.5 cms. in length located at the lower left quadrant or at the uppermost part of the left lateral thigh. This was not a fatal wound. Both could have been caused by any sharp pointed or bladed instrument like a knife. The first stab wound could have been inflicted with the assailant in front of the victim or at the right side of the victim or somewhere obliquely to the right of the patient, using his right or left hand. The second stab wound could have been inflicted with the assailant in front or could be on the left side of the victim, obliquely to the side of the victim, which he could inflict if he comes from the rear or from the back of the victim using his right hand.

According to private complainant, he first saw the accused coming about twenty-five (25) meters from him. He directly came to him and he did not know that he was holding a knife. He just came all of a sudden and he did not know he would stab him. Before this incident, they did not quarrel and had no misunderstanding.

He spent a total of P25,390.00 as a result of these injuries he sustained. (Exhs. B, B-1 and B-2; Exhs. C, C-1 to C-41; and Exhs. E-1 to E-10).^[4]

The petitioner invoked self-defense. He testified that at about 9:00 a.m. on September 16, 1997, he was in the house of his aunt at Barangay Taclobo, San Fernando, Romblon. His aunt had asked him to take care of her children. While he was in the kitchen slicing lemon, he heard someone shouting outside the house: "Get out those who are brave!" He then pocketed the knife he was using and went out of the house to find out what the commotion was all about.

Outside, the petitioner saw Crispulo Romano, Joval Rones and Herberto Rafol. Rafol was armed with a bolo. He went out of the gate and asked Rafol, "Why are you like that?" Peeved, Rafol handed his bolo over to Rones and approached the petitioner, kicking him on the left arm. The two then had a fistfight. When the petitioner saw Rones raise his bolo, he pulled out the knife from his pocket to defend himself. Rafol also pulled out a knife of his own. The petitioner then stabbed Rafol on the front portion of his body, and the latter's knife fell to the ground.

The petitioner picked up his knife and stabbed Rafol anew. He then faced Rones, who ran away. The petitioner did not notice where Romano had gone. He then fled from the scene of the crime and proceeded to the house of his aunt.

The petitioner's testimony was corroborated in part by Jovy Vicente. He testified

that at about 9:00 p.m. on September 16, 1997, he was wheeling his bicycle on his way home. He passed by Rafol who was then conversing with Perla Perez. He saw Rafol holding an empty bottle of gin and Romano holding a bolo. The two were already inebriated. He saw the petitioner emerge from the gate of his aunt's house and walk past him on his right side.

The petitioner's aunt, Perla Perez, testified that she saw Rafol holding a bolo. When she saw the petitioner and Rafol throwing stones at each other, she was so petrified that she frantically fled from the scene, her legs trembling. However, she contradicted herself when she also testified that she saw Rafol hand over his bolo to Rones, and Rafol and the petitioner boxing each other. Afraid, she fled from the scene. She did not witness the stabbing of Rafol by the petitioner.

The trial court, thereafter, rendered judgment convicting the petitioner of the crime charged and sentencing him to an indeterminate penalty, appreciating against him the generic aggravating circumstance of treachery. The decretal portion of the decision reads:

WHEREFORE, this Court finds the accused ALEXANDER P. RUGAS, GUILTY beyond reasonable doubt of the crime of Frustrated Homicide under the Information, dated December 11, 1997, and hereby sentences him to a prison term of not less than 6 years and 1 day of *prision correccional*, as minimum, to 10 years and 1 day of *prision mayor*, as maximum, with the accessories of the law, to pay Herberto Rafol the sum of P25,390.00 as and for actual expenses, without subsidiary imprisonment in case of insolvency, and to pay the costs.

The period of preventive imprisonment the accused had undergone shall be credited in his favor to its full extent in accordance with Article 29 of the Revised Penal Code, as amended.^[5]

The trial court declared that the petitioner failed to prove that he acted in self-defense when he stabbed the victim twice on the left side of the body and on the uppermost portion of the left thigh. The petitioner likewise failed to surrender to the police authorities and give a statement stating that he stabbed the victim in self-defense, and account for the knife he used in stabbing the victim. The court also declared that the petitioner's testimony and those of his witnesses contradicted each other.

On appeal, the Court of Appeals affirmed the decision of the trial court with modifications, with the following ratiocinations:

The defense proved that there was unlawful aggression on the part of the victim when he allegedly kicked the accused. This is just the mere claim of the accused which is not corroborated by Mrs. Perez who testified that there was a fistfight between the two. Perla Perez declared that the two had a fistfight because of the shout, the brave come out (tsn, Dec. 2, 1998, p. 7). Aside from this, when asked by the court if the accused was injured when he was kicked at the eyebrow, the accused said no. Simply, this Court does not believe that the victim kicked the accused at the eyebrow. The accused was apparently inconsistent, as the trial court observed in its ratiocination, is exemplified to wit: "True, he claimed that

Rafol kicked him in his left arm before the alleged fistfight between him and Rafol (Alexander P. Rugas, Jr., on direct examination, tsn, May 14, 1999, p. 6), yet he would point later to his eyebrow as sustaining no injury as a result of the kick by Rafol (supra, on cross-examination, p. 10) likewise, when asked in what part of the body he stabbed Herberto Rafol of the first time, he answered in front, with the accused waving his hand up and down (supra, p. 13), when actually it was almost directly on the left side of the body of Rafol at the uppermost part of the left lateral thigh and certainly not in front as demonstrated by the accused (please refer also to sketch G).

As questions were profounded (sic) on both the prosecution's and defense's witnesses, it can be traced that they knew each other. If this is the case, it can be said therefore, that complainant knew that the one whom he claimed to be he was talking with at the time was the aunt of the accused. Yet, the victim has no apprehension in his claim that he was called by Mrs. Perla Perez. As this court went over the testimony of the prosecution's witnesses, it finds their testimony to be more consistent and credible. Capole, another prosecution's witness, testified that he saw the accused with a knife running towards the victim. The defense obviously tried to destroy the testimony of the said witness but this Court believes that it failed.

While on the other hand, the defense witness Perla Perez' answers were evasive and not responsive to the questions profounded (sic) when cross-examination was undertaken on her. In her direct examination, she testified that she had a companion Violeta Eling (tsn, Dec. 2, 1998, p. 3), they were near the street where the store was also near (supra, p. 4). But when Alex went out to ask "Why are you like that?" allegedly to the victim, Perez declared that she was then alone. And Yolanda was far (tsn, Dec. 2, 1998, p. 29). This court also notes Perez' testimony at first that the victim broke a bottle of gin but who later admitted that she did not see it but only overheard it from a certain Yolanda. But according to her, Yolanda was far from her. This court doubts the credibility of this witness. Besides, she admitted she had not witnessed anything except that she heard the shouting and thereafter left then.

Certainly, this court is not impressed with the theory of the accused that the victim, Rafol, was holding a bolo at the time but handed it later allegedly to one Joval Rones. That at the course of the fistfight, complainant drew a knife while Joval Rones was raising his hand holding the bolo. These two aggressors were armed if we are to believe the defense but despite of that, accused with a mere knife and who was not ready for a fight if he is to be believed because he was slicing a lemon at the kitchen then faced his aggressors without fear. Again, if we would take hook line and sinker the defense's theory, there are three companions of the victim so that, there were four in all. Yet, it is surprising and contrary to human nature and experience that accused never suffered even a slight injury. The physical facts in the instant case reveals that accused did not act in self-defense.

In the present case, the defense claimed that the victim shouted while in