

FIRST DIVISION

[G.R. No. 155258, October 07, 2003]

CONRADO CANO Y SAMPANG, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

YNARES-SANTIAGO, J.:

The primordial issue to be resolved in this petition for *certiorari* is whether or not petitioner killed his brother in self-defense.

Petitioner Conrado Cano y Sampang and his deceased brother Orlando Cano were rivals in the Rush ID Photo business and had booths along the sidewalk of Rizal Avenue, Sta. Cruz, Manila fronting the Philippine Trust Bank and Uniwide Sales Department Store. The fateful altercation which culminated in the fatal stabbing of Orlando Cano stemmed out of this rivalry, particularly the incident where Conrado took the business permit from the booth of Orlando without his permission thus incurring the latter's ire.

The prosecution's version of what transpired as summarized in the People's brief^[1] shows that in the morning of May 31, 1993, at about 7:00 o'clock, the victim Orlando Cano arrived at the Rush ID Booth of petitioner located below the LRT line in Rizal Avenue, Sta. Cruz, Manila. The victim asked David Olivario, an employee of petitioner, where the latter was. The victim angrily said that petitioner was *pakialamero*. He also said, "*Putang ina niya! Why did he Xerox our permit.*" Since petitioner had not yet arrived, the victim returned to his own Rush ID booth located several meters away.^[2]

Later, at about 9:30 a.m., petitioner arrived at his Rush ID booth. After giving supplies to Olivario, petitioner said he was going to the City Hall. He faced the mirror and started to comb his hair. The victim suddenly arrived and held petitioner on the shoulders and turned him around. The victim asked him, "*Anong gusto mong mangyari?*" Accused did not answer.^[3]

The victim tried to stab petitioner with a *balisong* but the latter was able to run and lock himself inside the dark room inside his booth. The victim followed him and tried to open the door of the dark room and shouted, "*Lumabas ka diyan! Putang ina mo, papatayin kita!*" Petitioner did not come out. The victim tried to force the door open by kicking it and stabbed the door with his *balisong*. The door of the dark room suddenly opened and petitioner emerged carrying a pair of scissors. The victim and petitioner struck at each other. During the scuffle, the scissors fell from petitioner's hand. He then grabbed the knife of the victim who, in turn, picked up the scissors. They again attacked each other.^[4]

The victim fell and his wife rushed to his side. Petitioner fled from the scene. The

victim's wife asked for assistance from the people in the vicinity. The victim was then loaded on a jeep and was rushed to a hospital, but he was dead on arrival.^[5]

The autopsy report submitted by the medico-legal officer of the Western Police District, Dr. Manuel Lagonera, shows that the victim sustained at least thirty (30) stab wounds, six (6) of which were fatal.^[6] On the other hand, petitioner suffered only an incised wound on the right hand measuring six (6) cm., which required less than nine (9) days of treatment.

Petitioner had a different account of what transpired. He testified that on May 31, 1993 at around 9:30 a.m. he went to his Rush ID booth in front of the Philtrust Bank to deliver supplies to his photographer, David Olivario.^[7] After handing over said supplies to Olivario, petitioner intended to go to the Manila City Hall to apply for a business permit.^[8]

Petitioner's earlier application for a permit was denied.^[9] He sought a reconsideration from the city officials and argued that his brother was issued a similar permit. In order to prove his point, he borrowed the permit of his brother from his nephew, Wilson Reyes, to have it machine copied.^[10] After doing so, petitioner returned it.^[11] The victim apparently resented this because petitioner was informed by David Olivario that Gloria Cano later went to petitioner's stall angrily inquiring why they got the permit.^[12]

As petitioner was combing his hair and preparing to leave for the Manila City Hall, the victim, Orlando, suddenly appeared from behind, grabbed him by the left shoulder and jerked him around so that they were face to face.^[13] As they stood face to face, Orlando menacingly said, "*Anong gusto mong mangyari?*"^[14] Petitioner noticed Orlando holding a *balisong*, and he ran to the dark room of his stall.^[15]

The victim pursued him and tried to force open the locked dark room door by kicking it and stabbing it with the fan knife.^[16] He kept shouting, "Get out of there! *Pakialamero ka!* Get out of there and I will kill you!"^[17] The door suddenly gave way and, as it opened, the victim charged at petitioner, but he was able to evade the attack. Snatching a pair of scissors nearby, petitioner retaliated but the scissors fell from his grasp because it was parried by the victim.^[18] Petitioner then grabbed the hand of the victim holding the *balisong* and they grappled to gain possession thereof. He eventually wrested control of the knife and as he stood momentarily, the victim picked up the scissors and again lunged at him.^[19]

With nowhere to go, petitioner was forced to defend himself from the onslaught of the victim who was armed with the nine-inch long pair of pointed scissors.^[20] No bystanders tried to pacify them as they engaged in their deadly struggle for almost two (2) minutes. Suddenly, the victim collapsed and fell bloodied to the floor.^[21]

Petitioner stooped to lift his brother up, intending to bring him to the hospital. However, he was hit by the victim's wife with a chair. Then, she started shouting, "Holdupper!"^[22] Petitioner was forced to flee from the scene for fear of being lynched by the people who had gathered around armed with clubs. The people

pursued him but when he saw a policeman coming in his direction, he threw the *balisong* away and raised his hands in surrender.^[23] He was then brought to the police precinct and later to the hospital for treatment of his injuries.^[24]

Petitioner was charged with Homicide in an Information^[25] which alleges -

That on or about May 31, 1993, in the City of Manila, Philippines, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon one ORLANDO CANO y SAMPANG, by then and there stabbing the latter on the different parts of his body, thereby inflicting upon the said ORLANDO CANO Y SAMPANG mortal and fatal wounds which were the direct and immediate cause of his death thereafter.

Contrary to law.

The case was docketed as Criminal Case No. 93-121668 and filed with the Regional Trial Court of Manila, Branch 31.

Upon arraignment, petitioner pleaded not guilty to the offense charged. The case thereupon proceeded to trial. After trial, the court *a quo* rendered judgment^[26] finding petitioner guilty beyond reasonable doubt of the crime and sentencing him to serve an imprisonment of seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* and to indemnify the heirs of the deceased P50,000.00 plus costs.

Petitioner interposed an appeal to the Court of Appeals, where it was docketed as CA-G.R. CR No. 19254.

During the pendency of the appeal,^[27] Gloria Cano, the widow of the victim, executed a *Sinumpaang Salaysay*^[28] stating, among others, that petitioner merely acted in self-defense and that she was withdrawing the charge against him. This sworn statement became the basis of an Urgent Motion for New Trial^[29] on the ground of newly discovered evidence filed by counsel for petitioner.

This motion for new trial was, however, denied by the Court of Appeals in a Resolution dated March 19, 1998.^[30]

The appellate court subsequently rendered judgment affirming petitioner's conviction but modifying the penalty to an indeterminate sentence of imprisonment ranging from nine (9) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years and eight (8) months of *reclusion temporal*, as maximum. Petitioner was likewise ordered to pay the heirs of the victim actual damages of P24,605.75; P50,000.00 as moral damages and another P50,000.00 as civil indemnity *ex delicto* plus costs.^[31]

Preliminarily, the Solicitor General argues that the petition raises merely factual issues, such as whether or not petitioner is entitled to the justifying circumstance of self-defense and the mitigating circumstance of provocation or threat and voluntary surrender. These issues, says the Solicitor, are not proper for a petition for review under Rule 45 of the Rules of Civil Procedure.

Concededly, those who seek to avail of the remedies provided by the rules must adhere to the requirements thereof, failure of which the right to do so is lost. It is, however, equally settled that rules of procedure are not to be applied in a very rigid, technical sense and are used only to help secure substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated.^[32] They should be liberally construed so that litigants can have ample opportunity to prove their claims and thus prevent a denial of justice due to technicalities.^[33]

Therefore, we shall proceed to resolve the issue of whether or not petitioner is entitled to invoke the justifying circumstance of self-defense, considering that what is at stake is not merely his liberty, but also the distinct possibility that he will bear the stigma of a convicted felon and be consigned to the fate of being a social pariah for the rest of his life.

As can be seen from the foregoing, the prosecution and the defense have diametrically opposed factual versions of what transpired immediately preceding the killing. Our task is to determine which of them is the truth. In resolving such conflict, dealing as it does with the credibility of witnesses, the usual rule is for us to respect the findings of the trial court considering that it was in a better position to decide the question, having heard the witnesses themselves and having observed their deportment and manner of testifying during trial.^[34] Nonetheless, this rule is circumscribed by well-established exceptions.^[35]

In the case at bar, the record shows circumstances of weight and influence which have been overlooked, or the significance of which has been misinterpreted, that if considered would affect the result of the case.^[36]

For self-defense to prosper, petitioner must prove by clear and convincing evidence the following elements: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.^[37] Although all the three elements must concur, self-defense must rest firstly on proof of unlawful aggression on the part of the victim. If no unlawful aggression has been proved, no self-defense may be successfully pleaded, whether complete or incomplete.^[38] In other words in self-defense, unlawful aggression is a primordial element. It presupposes an actual, sudden and unexpected attack or imminent danger on the life and limb of a person - not a mere threatening or intimidating attitude - but most importantly, at the time the defensive action was taken against the aggressor.^[39]

In the case at bar, there are several material circumstances which were ignored by both the court *a quo* and the appellate tribunal.

First, contrary to the findings of both the appellate and trial courts, there are facts extant on record which clearly shows that it was an *armed* victim who initially attacked the petitioner with a *balisong*. Petitioner testified on the assault thus:

Atty. Ferrer:

What happened after that when Orlando Cano grabbed you and came face to face with him?

A. I answered him none but he was in a menacing position with his hands around something and I suddenly ran away.

Q. What was that something in the hands of Orlando Cano that made you run away?

A. *Balisong* "29," Sir.

Atty. Ferrer:

And where did you run to?

A. I went inside my booth because that is the only place I can run to.

Q. And what happened inside your booth, if any?

A. He also ran after me and then when I was inside we were having a tug of war of the doorknob which I tried to close and which he tried to open.

Q. What happened after that?

A. But I was able to close the door but he kept on kicking the door that I turned deaf.

Q. What else happened, if any?

A. While he was kicking, he was also stabbing the door with the "29" (*balisong*) he was holding.

Q. And you said you heard the thudding of the door making noise, what happened if any?

A. He kept on shouting, "Get out of there! *Pakialamero ka!*" "Get out of there and I will kill you."

Q. What did you do did you go out?

A. While he was shouting I did not notice that the door was not completely closed because the lock went on and the door suddenly opened.

Q. What happened after the door got open?

A. When the door opened he again rushed me, stabbed and I was able to evade it.

Atty. Ferrer:

What else happened?

Witness:

A. I was able to grab a scissors and that was the time I retaliated.

Q. Who owned this scissors?

A. That scissors was mine because it is used in cutting paper.

Q. Now, you said you retaliated after grabbing a pair of scissors where did you retaliate?

A. I was about to retaliate in the door of the room because the room was very small.

Q. Where you able to retaliate?