

FIRST DIVISION

[G.R. No. 134784, December 09, 2002]

CARLOS ARCONA Y MOBAN, PETITIONER, VS. THE COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

DECISION

YNARES-SANTIAGO, J.:

Petitioner Carlos Arcona y Moban^[1] and his brother Benito Arcona y Moban were charged with Murder and Frustrated Murder^[2] in separate information which read:

Criminal Case No. 6408 (Murder).

That on or about the 27th day of June, 1986 at Barangay Labog, Municipality of Brooke's Point, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court the above-named accused conspiring, confederating together and mutually helping one another, with intent to kill and with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and stab one NAPOLEON ONG with a bladed weapon to wit; a knife hitting him in vital part of his body and inflicting upon him injury which was the direct and immediate cause of his death shortly thereafter.

Criminal Case No. 6409 (Frustrated Murder).

That on or about the 27th day of June 1986 at Barangay Labog, Municipality of Brooke's Point, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court the above-named accused conspiring, confederating together and mutually helping one another, with evident premeditation and treachery and with intent to kill did then and there willfully, unlawfully and feloniously attack, assault, strike and beat with a bamboo pole one EDGARDO TALANQUINES hitting him on different parts of his body and inflicting upon him injuries which would have caused his death thru performing all the acts of execution which would have produced the crime of murder as a consequence but nevertheless did not produce it by reason of causes independent of the will of the accused that is EDGARDO TALANQUINES have parried the blows, escape away from his assailant and by the timely and able medical assistance rendered to said Edgardo Talanquines which prevented his death.

On arraignment both accused pleaded "not guilty". Thereafter, the cases were jointly tried.

It appears that at around 7:30 in the evening of June 27, 1986, Napoleon Ong and Edgardo Talanquines were walking along the national highway at Barangay Labog, Brooke's Point, Palawan, on their way home after coming from a birthday party.

When they were near the house of Jerry Boston, Edgardo heard a loud thud. He turned around saw Napoleon slump to the ground. Suddenly, someone hit Edgardo from behind with a piece of bamboo, causing him to fall. He saw no one in the immediate premises except petitioner. Edgardo then stood up and ran towards the house of Cesar Umapas to ask for help.

Prosecution witness Leo Zaragoza testified that he was standing in front of Jerry Boston' house, about seven (7) meters away, when he saw petitioner stab Napoleon.

Napoleon expired on the way to the hospital. Dr. Joaquin Fabellon, who conducted the autopsy on Napoleon's body, certified that the cause of death was the stab wound sustained at the stomach area just above the waistline.

Petitioner voluntarily surrendered to T/Sgt. Romeo Laging at the PC Detachment Command in Barangay Lugod.

In his defense, petitioner alleged that in the evening of June 27, 1986, he was walking alone when he met Napoleon Ong and Edgardo Talanquines. Without any provocation, Napoleon suddenly drew his bolo and shouted, "*Caloy, I will kill you!*"

[3] Napoleon swung the bolo at him twice but missed him. Petitioner then drew out his knife and stabbed Napoleon. When he saw Edgardo Talanquines rushing towards him, he grabbed a piece of bamboo from the newly constructed culvert and hit the former on the left arm. Talanquines ran away. Petitioner also left the premises and went home. On the way, he met his brother, Benito, and together they proceeded to their house.[4]

After trial, the court *a quo* rendered judgment in Criminal Case No. 6408 convicting petitioner of Homicide and acquitting Benito Arcona. In Criminal Case No. 6409, the trial court convicted Benito Arcona of Slight Physical Injuries and acquitted petitioner. The dispositive portion of the decision[5] reads:

WHEREFORE, premises considered, the Court renders judgment in Criminal Case No. 6408 finding Carlos Arcona y Moban GUILTY beyond reasonable doubt of the crime of Homicide under Art. 249 of the Revised Penal Code, with the mitigating circumstance of voluntary surrender to authorities and no aggravating circumstances. He is hereby sentenced to suffer the indeterminate penalty of SIX (6) YEARS and ONE (1) DAY OF PRISION MAYOR as MINIMUM to FOURTEEN (14) YEARS and ONE (1) DAY OF RECLUSION TEMPORAL as MAXIMUM, and to indemnify the heirs of Napoleon Ong the sum of THIRTY THOUSAND PESOS (P30,000.00) for his death, TEN THOUSAND PESOS (P10,000.00) as actual damages and TEN THOUSAND PESOS (P10,000.00) as moral damages. Benito Arcona is acquitted of the crime charged, for failure of Prosecution to prove his guilt beyond reasonable doubt.

In Criminal Case No. 6409, Benito Arcona is found GUILTY beyond reasonable doubt of the crime of Slight Physical injuries and is sentenced to suffer imprisonment of TWENTY (20) DAYS of ARRESTO MENOR and to indemnify Edgardo Talanquines the sum of TEN THOUSAND PESOS (P 10,000.00) as actual damages. Carlos Arcona is ACQUITTED of the crime charged for failure of Prosecution to prove his guilt beyond reasonable doubt.

Only petitioner appealed to the Court of Appeals, assailing his conviction for Homicide in Criminal Case No. 6408. On January 28, 1997, the Court of Appeals affirmed the findings of the trial court but increased the civil indemnity to P50,000.00, thus:

WHEREFORE, for all the foregoing, the decision of the trial court finding appellant Carlos Arcona guilty of Homicide mitigated by his voluntary surrender to the authorities is hereby AFFIRMED, with the sole modification that the civil indemnity Carlos Arcona shall pay to the heirs of Napoleon Ong is hereby increased to Fifty Thousand Pesos (P50,000.00).^[6]

Petitioner filed the instant petition for review. He maintains that he acted in self-defense when he stabbed Napoleon and hit Edgardo with a bamboo stick. He contends that Napoleon committed unlawful aggression when drew an unsheathed bolo and attempted to hack him with it twice. Moreover, petitioner invokes the testimony of Jerry Boston, to the effect that before the stabbing incident he heard somebody shout, "*Caloy, patayon kita.*" (Caloy, I will kill you!)^[7]

We are not persuaded. It is settled jurisprudence that when an accused invokes self-defense, the *onus probandi* to show that the killing was justified shifts to him. Even if the prosecution evidence was weak, it could not be readily dismissed considering that the accused had openly admitted his responsibility for the killing.^[8]

To prove self-defense, the accused must show with clear and convincing evidence that: (1) he is not the unlawful aggressor; (2) there was lack of sufficient provocation on his part; and (3) he employed reasonable means to prevent or repel the aggression. Self-defense, like alibi, is a defense easy to concoct. It is axiomatic that once an accused had admitted that he inflicted fatal injuries on the deceased, it is incumbent upon him, in order to avoid criminal liability, to prove the justifying circumstance claimed by him with clear, satisfactory and convincing evidence.^[9]

The question whether accused-appellant acted in self-defense is essentially a question of fact. In self-defense, unlawful aggression is a primordial element.^[10]

In the case at bar, the trial court was evidently not satisfied and convinced with petitioner's claim that Napoleon was the unlawful aggressor, thus:

It has been established that a bolo identified as belonging to Napoleon Ong was found at the scene of the crime. The Court is also convinced that the stabbing incident was preceded by the sounds of a scuffle or fight because it was these unusual noises which led Leo Zaragosa and Benito Arcona to go out of the house of Jerry Boston in order to investigate what had happened. However, the presence of the bolo of Napoleon Ong, and the shout of "Caloy, I will kill you" allegedly uttered by the deceased are circumstantial evidence and not sufficient to conclude that the deceased had committed acts of unlawful aggression which justified the stabbing by accused Carlos Arcona.^[11]

We agree with the findings of the trial court. The presence of Napoleon's unsheathed bolo at the crime scene and the scattered bamboo sticks suggest a number of scenarios. While the physical evidence may suggest that Napoleon drew the bolo