

EIGHTEENTH DIVISION

[CA-G.R. CR. NO. 00340, January 30, 2015]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILLY SIMON ALIAS "BOBOT", ACCUSED-APPELLANT.

DECISION

INGLES, G. T., J.:

Before us is an appeal seeking to annul and reverse the Decision^[1] dated November 8, 2005 of the Regional Trial Court, 6th Judicial Region, Branch 61, Kabankalan City, Negros Occidental in Criminal Case No. 2000-2545 which sentenced the accused-appellant for homicide as follows:

"WHEREFORE, the Court finds accused Willy Simon alias "Bobot" guilty beyond reasonable doubt of the crime of homicide as charged and considering the mitigating circumstance of voluntarily surrender and applying the Indeterminate Sentence Law hereby sentences said accused to suffer the penalty of imprisonment of eight (8) years, as minimum, to thirteen (13) years, as maximum, to indemnify the heirs of Wilson Engada the amount of P50,000.00 by reason of his death, to pay them P30,000.00 as actual damages, P1,020,000 as loss of income and costs.

It is ordered that said accused be immediately remitted to the National Penitentiary.

SO ORDERED."

An Information^[2] was filed charging appellant with the crime of Homicide. The Information reads:

"That on or about the 6th day of September, 2000, in the City of Kabankalan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above named accused with intent to kill, armed with a bolo and a knife, did then and there willfully, unlawfully and feloniously attack, assault and hack WILSON ENGADA y MEDIADERO, thereby inflicting injuries in the body of the latter which caused his death.

CONTRARY LAW."

Upon arraignment, accused-appellant pleaded not guilty to the crime charged.

Pre-trial was thereafter held where a pre-marking of exhibits was conducted.

Trial on the merits ensued. The prosecution presented the following witnesses:

Rosela Quiza, Edna Alvarez and Wilma Oribe. Their testimonies, as summarized by the trial court in its assailed decision, are as follows:

"The version of the prosecution of the events is as follows: on September 6, 2000 at around 2:00 o'clock in the afternoon while accused Willy Simon was playing "tong-its" card game with Rosela Quiza at the latter's coffee shop located at Burgos Street, Brgy. 9, Kabankalan City, victim Wilson Engada, then twenty-nine (29) years of age, arrived and from the outside shouted to the accused "why did you have me summoned?" Rosela Quiza then posed herself along the way in between the accused and the victim. Quiza was aware that the victim was looking for the accused because of an untoward incident that took place the night before involving the two (2). The accused left by going to the back door of the house of Rosela Quiza and seeing a butcher's knife got it and proceeded to his house. Upon reaching his house, accused got a fighting bolo about eighteen (18) inches long and a knife about six (6) inches in length, went down from the house and shouted at the victim who was already at the store of Edna Alvarez saying "okay, let us finish this." The victim armed with a short weapon about eight (8) inches in length came near the accused facing each other and circling each other for a short while. The accused first struck the victim hitting the latter at the head. Thereafter, they grappled and both were wounded. The victim suffered multiple injuries and died as a consequence while accused maintained a wound on his face."

Accused himself testified for the defense. His testimony, as summarized by the trial court in the assailed decision, is hereunder quoted as follows:

"Accused Willy Simon, thirty-nine (39) years old and member of the Barangay Tanod of Brgy. 9, Kabankalan City denies the accusation against him and invoked the justifying circumstance of self defense. He claims that on September 6, 2000, while he was inside the store of Edna Alvarez in Burgos Street, Brgy. 9, Kabankalan City, Negros Occidental victim Wilson Engada came out of the house drunk, went to him and challenged him to a fight from the outside. Edna Alvarez pacified the victim and told him not to come out because the former is outside the store together with his younger sibling. After a while the patrol car arrived and he was able to go home. He had the incident entered in the police blotter and the victim got angry. At around 2:00 o'clock in the afternoon while he was in the coffee shop of Rosela Quiza at Burgos Street, Brgy. 9, Kabankalan City, Negros Occidental the victim saw him and immediately came near, challenged him to a fight, got his knife and told him that they would finish their fight. Rosela Quiza reprimanded the victim so that the fight would not happen in her store. Thereafter, he went home as his house is just across the road and saw the victim following him. Afraid that the victim might harm his family, he went down from his house and faced him. His intention was only to threaten the victim but the latter came near him armed with a knife. He and the victim grappled for the knife and it dropped on the ground. The victim got hold of the bolo he was holding and used the same in hacking him and hit him twice. He wrestled the victim's knife from him and he hacked the victim with his bolo hitting him at the head. The victim grappled for the bolo and hacked him hitting him on the face."

After trial and reception of documentary and testimonial evidence, the trial court rendered a decision convicting appellant of the crime of homicide. Accused filed the instant appeal. In his Appeal Brief^[3], he interposed the following assignment of errors, to wit:

I. THE LOWER COURT ERRED IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCE OF SUFFICIENT PROVOCATION IN FAVOR OF THE ACCUSED-APPELLANT;

II. THE LOWER COURT ERRED IN AWARDING DAMAGES FOR LOSS OF INCOME AND BURIAL EXPENSES DESPITE THE LACK OF DOCUMENTARY EVIDENCE.

Appellant contends that there was sufficient provocation in the instant case inasmuch as it was duly established by testimony that at the time of the incident, the victim, Wilson Engada, who was then holding a knife, shouted at herein appellant and challenged the latter to a fight.

We do not agree with appellant.

The Supreme Court, in the case of *RODEL URBANO vs. PEOPLE OF THE PHILIPPINES*,^[4] has ruled that:

"When the law speaks of provocation either as a mitigating circumstance or as an essential element of self-defense, the reference is to an unjust or improper conduct of the offended party capable of exciting, inciting, or irritating anyone; it is not enough that the provocative act be unreasonable or annoying; the provocation must be sufficient to excite one to commit the wrongful act and should immediately precede the act."

In another case entitled *MANUEL O. ORIENTE vs. PEOPLE OF THE PHILIPPINES*,^[5] the Supreme Court ruled that:

"Provocation is defined to be any unjust or improper conduct or act of the offended party, capable of exciting, inciting, or irritating anyone. In order to be mitigating, provocation must be sufficient and should immediately precede the act. Provocation is sufficient if it is adequate to excite a person to commit the wrong, which must accordingly be proportionate in gravity. That the provocation must immediately precede the act means that there should not be any interval of time between the provocation by the offended party and the commission of the crime by the person provoked."

In the instant case, it was duly established that appellant was able to get out of the coffee shop and go to his own house after the victim challenged him to a fight. Quoted hereunder are portions of the testimony^[6] of eye-witness Rosela Quiza, to wit:

"PROS. GARDE

Q So, what happened next after Wilson Engada uttered that statement?

A Willy Simon when I intervened, he was able to enter my