

EIGHTEENTH DIVISION

[CA G.R. CEB-CR-H.C. NO. 00450, February 26, 2015]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMIL GAVINO, ACCUSED-APPELLANT.

D E C I S I O N

LOPEZ, J.:

Before this Court is an Appeal assailing the Decision^[1] dated October 4, 2005 of Branch 13, Regional Trial Court of Culasi, Antique (hereafter, the "court *a quo*") in Criminal Case No. C-250, entitled "*People v. Ramil Gavino*", which found Ramil Gavino (hereafter, "accused-appellant") guilty beyond reasonable doubt of the crime of murder. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the Court finds the accused guilty for the crime charged – Murder- for killing the victim Dennis Lachica with treachery and with attendant circumstances of ignominy and hereby sentences the accused to a death penalty by lethal injection or by electric chair.

SO ORDERED.

Accused-appellant, is charged with murder for the death of Dennis Lachica (hereafter, "Dennis") in an Information^[2] docketed as Criminal Case No. 312-C, *viz*:

That on or about 15th day of November 1996, in the Municipality of Caluya, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a bamboo pole, with intent to kill, did then and there willfully, unlawfully and feloniously, attack, assault and beat with said bamboo pole one Dennis Lachica, thereby inflicting upon the latter fatal wounds on the vital parts of his body which caused his instantaneous death. Dumping the dead body of Dennis Lachica to the deep sea and beyond recovery even up to the present,^[3] was attended by ignominy.

With the qualifying circumstance of treachery and attended by the ordinary aggravating circumstance of ignominy.

Contrary to the provisions of Article 248 of the Revised Penal Code as amended by Republic Act 7659.

Per Order dated September 16, 1997, accused-appellant was arraigned.^[4] Accused-appellant pleaded not guilty. The prosecution then presented its case.

The Version of the Prosecution

The Prosecution presented as witnesses Benedicto Gavino (hereafter, "Benedicto"), Rommy Villalon (hereafter, "Rommy")^[5] and Eliezer Lachica (hereafter, "Eliezer").

The version of the Prosecution as synthesized by the Office of the Solicitor General (OSG):^[6]

On the evening of November 15, 1998 at Sitio Caacob,^[7] Sibay, Caluya, Antique, witness Romy Villalon was awakened by noise from people outside his house. When he peeped at the window, he saw accused-appellant Ramil Gavino, Jairo Matulac and the victim Dennis Lachica walking towards the sea shore. Subsequently, Lachica went to his house looking for a bolo but was not able to get any. On Lachica's way back to the shore, witness Villalon saw accused-appellant hit Lachica on the face with a bamboo pole causing the latter to lose consciousness. Accused-appellant then pulled Lachica's body to the shore, loaded it on his banca, and sailed towards the sea.

Meanwhile, witness Benedicto Gavino, younger brother of the accused-appellant was sleeping at his Auntie Diday's house on the evening of November 15, 1998, when he was awakened by his brother. Accused-appellant asked Benedicto and a certain Ariel Surilla to go with him to the seashore. Upon reaching the seashore, accused-appellant pointed to the two, blood stains on the coconut leaves that belong to the victim Lachica whom he bragged that he killed. After which, accused-appellant burned the leaves; and when they all returned to the house of Auntie Diday, he even showed the wallet belonging to the victim to Benedicto.

Witness Eliezer Lachica, brother of the victim, on November 17, 1998 heard from two children about a news that a man was found floating in the sea. The following day, he with three others, went to the Tambalang plantation, where the floating body was seen. Sadly, it was the dead body of Dennis Lachica, apparently with a broken nose and wound on his cheek.

The Version of the Defense

The defense, on the other hand, presented Rodel Lorenzo (hereafter, "Rodel"), Victorio Ortega (hereafter, "Victorio"), and accused-appellant himself to establish his defense of self-defense.

The defense's version of the facts is as follows:

Accused-appellant testified^[8] that on November 15, 1996, at about 7:00 o'clock in the evening, he was at the seashore of Sitio Cacub, Sibay, Caluya, Antique together with Rodel, watching the Tambalang seaweeds. They heard a shout for fight three (3) times. Dennis approached them, unsheathed his bolo and said "I will kill you". Accused-appellant held a paddle and inquired from Dennis why the latter wanted to kill accused-appellant. But Dennis hacked accused-appellant. Accused-appellant parried the blow of Dennis and struck Dennis with his paddle. Dennis fell into the water. Rodel and accused-appellant then left the area. Accused-appellant did not return home because he was afraid that the family of Dennis might retaliate. On

November 25, 1996, accused-appellant surrendered to Barangay Captain Allan Janairo.

Rodel corroborated this testimony of accused-appellant,^[9] stating that it was Dennis who challenged accused-appellant to a fight, unsheathed his bolo and tried to hack accused-appellant but the latter was able to parry the blow of Dennis. Accused-appellant then struck Dennis on the forehead with a paddle, who fell into the water. Rodel then ran away followed by accused-appellant.

Also presented to corroborate this testimony, was witness Victorio who testified^[10] that on the night of November 15, 1996, he was inspecting the seaweed plantation when he heard a shout for a fight. He saw Dennis walking towards the pump boat ridden by accused-appellant. Upon arriving at the pump boat, Dennis unsheathed his bolo and hacked accused-appellant, shouting "I will kill you". Accused-appellant was able to parry the blow and retaliated by hitting Dennis on the head with a paddle. Rodel then ran away followed by accused-appellant.

On October 4, 2005, the court *a quo* rendered the assailed Decision,^[11] finding accused-appellant guilty beyond reasonable doubt of murder.

On December 27, 2005, a Notice of Appeal^[12] was filed by accused-appellant and was given due course by the court *a quo* via an Order^[13] dated January 4, 2006.

On June 20, 2013, accused-appellant filed the Appellant's Brief^[14] with the following assignment of errors:

I

THAT THE HONORABLE COURT AQUO (SIC) ERRED IN ADMITTING THE TESTIMONIES OF THE PROSECUTION WTINESSES (SIC) WHICH ARE HEARSAY, CONTRADICTORY AND INTERTWINED WITH BIAS AND PREJUDICE.

II

THE HONORABLE COURT A QUO ERRED IN FINDING THE APPELLANT GUILTY OF MURDER AND NOT EXCULPATING HIM ON THE GROUND OF COMPLETE SELF-DEFENSE.

In his Appellant's Brief, accused-appellant maintains that the testimonies of the prosecution witnesses should not be given weight as these were not credible. He strongly asserts that he should have been acquitted because he had sufficiently proved all the elements of self-defense. He claims that his witnesses vividly clarified to the court *a quo* that it was Dennis who actually hacked him and because of this aggression, he struck Dennis in the forehead with a paddle. Accused-appellant contends that his use of the paddle is reasonable necessity to repel the unlawful aggression. And the mitigating circumstance of voluntary surrender should have been credited in his favor.

On the other hand, the Republic in its Brief^[15] alleges that the elements of the

crime of murder are present in the instant case. Moreover, the Republic contends that accused-appellant failed to satisfactorily establish all the elements of self-defense.

The Ruling of the Court

We deny the appeal.

The Supreme Court in the case of *People v. Fontanilla*^[16] explained the effects of an admission of self-defense, viz:

It is basic that once an accused in a prosecution for murder or homicide admitted his infliction of the fatal injuries on the deceased, he assumed the burden to prove by clear, satisfactory and convincing evidence the justifying circumstance that would avoid his criminal liability. Having thus admitted being the author of the death of the victim, Fontanilla came to bear the burden of proving the justifying circumstance to the satisfaction of the court, and **he would be held criminally liable unless he established self-defense by sufficient and satisfactory proof. He should discharge the burden by relying on the strength of his own evidence, because the Prosecution's evidence, even if weak, would not be disbelieved in view of his admission of the killing.**(Emphasis supplied)

Clearly, the burden to establish self-defense is on accused-appellant to show by strong, clear and convincing evidence that the killing is justified and that, therefore, no criminal liability has attached. Notably, a plea of self-defense cannot be justifiably appreciated where it is not only uncorroborated by independent and competent evidence, but also extremely doubtful in itself.^[17]

Here, accused-appellant failed to establish self-defense by clear, convincing and credible evidence.

Accused-appellant's version of the events leading to Dennis' death strains credulity. He admitted before the court *a quo* that he had never met Dennis prior to the incident. Yet, accused-appellant failed to explain why Dennis would want to kill him. There appears no trouble between them.^[18] Clearly, there was no motive on the part of Dennis to hurt accused-appellant. Accused-appellant wanted to impress upon the Court that Dennis wanted to fight and then Dennis approached him particularly and tried to hack him. It is confusing at the very least, why, of all people, it was accused-appellant who was hacked by Dennis when it was accused-appellant's contention that he was with Rodel when Dennis approached them. Also, Victorio testified that he was also within the vicinity when the incident happened.

Accused-appellant's plea of self-defense appears extremely doubtful. Except for the self-serving testimonies, there was no other evidence presented to prove unlawful provocation by Dennis. The bolo used by Dennis to allegedly hack accused-appellant was nowhere to be found. Also, there was no injury sustained by accused-appellant. Moreover, We note that the cause of death as reflected in the Certificate of Death and certified by the Rural Health Physician Dr Noel C. Alojado was skull fracture and not drowning.^[19] Hence, accused-appellant was able to injure Dennis fatally with no injury at all caused to himself.

The absence of injury on the part of accused-appellant, together with the evidence consisting of testimonies from accused-appellant and his witnesses, could not ouster the testimony of eyewitnesses Rommy and Benedicto whom We found to be credible.

Eyewitness Rommy was straightforward and categorical in his narration of how accused-appellant attacked and killed Dennis. His testimony could not be shaken. In fact, it withstood rigorous cross-examination by the defense. Besides, he positively identified accused-appellant as the perpetrator of the crime. He was the one being asked by Dennis for a bolo and the latter failed to get it from him, and then accused-appellant met Dennis in going back to the beach and struck Dennis three (3) times with a bamboo pole. He was also the person being asked by accused-appellant for a paddle after the latter brought Dennis to the boat. Rommy testified that he was merely eight (8) meters away from the area of incident,^[20] and saw everything because there was a half-moon and it was a clear night.^[21] Moreover, Rommy personally knew accused-appellant, the latter being their neighbor, their houses facing each other.^[22] Notably, once a person has gained familiarity with another, identification becomes an easy task even from a considerable distance. Most often, the face and body movements of the assailants create a lasting impression on the victim's and eyewitness' minds which cannot be easily erased from their memory.^[23]

Moreover, Benedicto testified that on the said fateful night, accused-appellant admitted to him and to Ariel Surilla that he killed Dennis after the latter showed to him the blood of Dennis on the coconut leaves.^[24] He further testified that he and Ariel Surilla saw the cadaver of Dennis the next day, upon the instruction of the accused-appellant to check on the cadaver. Benedicto is the brother of accused-appellant. Hence, We shall give credit to his testimony considering that it is the natural tendency of a person to testify for and not against his relatives.^[25] We see no reason why Benedicto would fabricate an untruth at the expense of his brother.

Besides, these two witnesses had no ill motive to testify against accused-appellant. It has been a consistent ruling of the Supreme Court that a witness' testimony deserves full faith and credit where there exists no evidence to show any improper motive why he should testify falsely against the accused, or why he should implicate the accused in a serious offense.^[26] Also, jurisprudence dictates that if an accused had really nothing to do with a crime, it would be against the natural order of events and of human nature, and against the presumption of good faith, that a prosecution witness would falsely testify against him.^[27]

In the instant case, accused-appellant's self-serving claim of self-defense coupled with the fact that he did not sustain any injuries from his supposed attacker, accused-appellant fails to support any claim of unlawful aggression, the crucial requisite to his defense. As found by the court *a quo*, there was no clear, credible, and convincing evidence that Dennis was the one who instigated the fight and that accused-appellant was merely fending off an attack.

Notably, the question of whether or not accused-appellant acted in self-defense is one of fact.^[28] The appellate court will generally not disturb the findings of the trial