

## TWENTIETH DIVISION

[ CA-G.R. CR NO. 01840, June 09, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY ESTRADA, ACCUSED-APPELLANT.**

### D E C I S I O N

**QUIJANO-PADILLA, J.:**

Before Us is an appeal<sup>[1]</sup> on the Decision<sup>[2]</sup> dated June 27, 2011 of the Regional Trial Court, Branch 66 of Barotac Viejo, Iloilo, finding herein accused-appellant, Jimmy Estrada, guilty beyond reasonable doubt of the crime of homicide in Criminal Case No. 98-699. The dispositive portion of the RTC's assailed Decision reads:

"WHEREFORE, the court hereby finds the accused Jimmy Estrada guilty beyond reasonable doubt of the crime of Homicide and hereby sentences said accused to an indeterminate prison term ranging from eight (8) years and one (1) day of prison mayor as minimum to fourteen (14) years and eight (8) months of reclusion temporal as maximum, together with the accessory penalty provided by law; to pay the heirs of the victim Gregorio Apitong P50,000 as indemnity, without subsidiary imprisonment in case of insolvency, and to pay costs.

SO ORDERED."<sup>[3]</sup>

Appellant Estrada was charged with homicide in an Information<sup>[4]</sup>, which reads:

"That on or about the 5<sup>th</sup> day of November, 1997, in the Municipality of San Dionisio, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a sharp bladed instrument (knife), with deliberate intent and decided purpose to kill, and without any justifiable cause or motive, did then and there willfully, unlawfully and feloniously assault, attack, and stab one GREGORIO APITONG with the weapon he was then provided, hitting the latter on the anterior chest which caused his death.

CONTRARY TO LAW."<sup>[5]</sup>

On arraignment, appellant Estrada pleaded not guilty to the crime charged but admitted killing the victim Gregorio Apitong in defense of the former's daughter who, at that time, was allegedly being raped by the latter. Hence, a reverse trial ensued.

Appellant Estrada in his defense raised the justifying circumstance of defense of a relative. To prove this, he presented his daughter, Mary Jane Estrada<sup>[6]</sup>, Dr. Jeline Duplayna<sup>[7]</sup>, and himself<sup>[8]</sup> as witnesses. He also offered as exhibits a request for

medical examination of Mary Jane signed by one SPO4 Anacleto Billones, the result of medical examination conducted by Dr. Jeline Duplayna, the birth certificate of Mary Jane, and the joint affidavit of Mary Jane and her grandfather, Alejo Lazarito. [9]

Appellant's evidence and version of events are summarized as follows:

In the evening of November 5, 1997, Gregorio Apitong went inside Mary Jane Estrada's room while she was sleeping. Gregorio pointed a knife at Mary Jane, covered her mouth, removed her shorts and underwear and raped her. But, while Gregorio was in the act of raping Mary Jane, his hand covering her mouth slipped, so she was able to shout "papang" to call out her father. Having heard her daughter's call, Jimmy Estrada rushed to her room and saw Gregorio on top of his daughter. Jimmy immediately struck Gregorio with a bamboo pole, which was used as support in the opening of their window. As Gregorio turned toward Jimmy, the latter struck Gregorio's face with the same bamboo pole, and Gregorio fell down. After seeing her father hit Gregorio, Mary Jane immediately put on her underwear and shorts and rushed to a corner of the room. She then saw her father Jimmy grabbed the knife, which was used to threaten her, and stabbed Gregorio on the chest. After seeing this, she left the scene, went downstairs, and fled to the house of her uncle where she slept and spent the rest of the night. When Jimmy was already alone with the dead body of Gregorio, Jimmy dragged the body and left it beside a road.

The next morning, Gregorio's body was found by the police. An investigation ensued, and the police and the barangay captain went to Jimmy's house. While the police and the barangay captain were there, Mary Jane also arrived. Jimmy told the police that his daughter was raped by Gregorio, and that the former caught Gregorio in the act, so he stabbed and killed Gregorio. Mary Jane narrated the incident that happened to the police. She also told the police that she was raped by Gregorio not only on the night of the killing but also on the two previous nights. The police, then, suggested that she go to the Municipal Hall for medical examination. Mary Jane heeded the advice and had herself checked by a doctor. At that time, the police did not arrest Jimmy even after confessing that he killed the victim, so he just waited for the return of his daughter.

The following day, Jimmy went to the house of the barangay captain and asked the latter to accompany him to the Municipal Hall in order to surrender.

Meanwhile, the results of the examination of Mary Jane showed that she has a healed laceration at 5:00 o'clock position in her hymen and that vaginal smears done to her were negative of spermatozoa.

On the other end, the evidence for the prosecution consisted of the testimonies of the victim's father and mother, namely Pedro and Prescila Apitong<sup>[10]</sup>, respectively, and two (2) witnesses, namely, Alex Buenafe<sup>[11]</sup> and Dr. Owen Lebaquin<sup>[12]</sup>; the medico-legal report signed by Dr. Owen Lebaquin; a picture of the dead body of Gregorio Apitong; and affidavits of Alex Buenafe and Pedro Apitong.<sup>[13]</sup> From these pieces of evidence, we reconstruct the prosecution's version of events summarized below.

On October 28, 1997, Gregorio Apitong left their place in Ajuy, Iloilo to go to Tuble, San Dionisio, Iloilo in order to work with Jimmy Estrada during the harvest season. Gregorio stayed in the house of Jimmy. Gregorio's parents learned his death when they were informed by the police. Gregorio's parents then went to San Dionisio and identified that the dead body was indeed their son.

In the evening when Gregorio was killed, Alex Buenafe, while riding his motorcycle and passing by Brgy. Tuble, saw three (3) persons pushing a *trisikad* and a dead person inside the *trisikad*. He recognized that one of these three was Jimmy Estrada. When he stopped to check what these persons were doing, Jimmy Estrada signalled him to proceed, so he just proceeded. He learned later on that the dead person inside the *trisikad* he saw that night was Gregorio Apitong.

Gregorio's body was subjected to examination and the results signed by Dr. Owen Lebaquin revealed the following:

1. "Hematoma, right periorbital area, measuring 4x2 cm, 3 cm from its anterior midline.
2. Hematoma, left periorbital area, measuring 4x3 cm, 4cm from its anterior midline.
3. Swelling, right temporal area, measuring 7x4 cm, 6cm from its anterior midline superimposed by an abrasion measuring 1.5 x 1.5 cm.
4. Lacerated wound, right supraorbital area, measuring 2x0.3 cm, 5.5cm from its anterior midline.
5. Ligature mark, right lateral aspect of the neck extending to the left lateral aspect of the neck, measuring 26x0.6 cm. Directed posteriorwards backwards.
6. Ligature mark, right lateral aspect of the neck, measuring 6x0.5 cm.
7. Abrasion, right lateral aspect of the neck, measuring 2.5x1 cm. 11 cm from its anterior midline.
8. Swelling, sternal area, measuring 14x12 cm. Bisected by its anterior midline.
9. Stabwound, right sterno-clavicular area, measuring 2x0.2 cm, 4cm from its anterior midline, 11 cm deep, directed posteriorwards downwards medialward lacerating the arch of the aorta.
10. Abrasion, left shoulder, measuring 4x3.5 cm, 15 cm from its anterior midline.
11. Abrasion, middle 3rd of the left lower leg, measuring 5x3 cm. 4 cm medial to its anterior midline.

Subdural hemorrhages are noted at the right frontal lobe area of the brain.

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Cause of death is due to Hemorrhage as a result of a stabwound at the anterior chest.”<sup>[14]</sup>

With these sets of evidence, the RTC ruled that appellant Estrada failed to prove by clear and convincing evidence that the killing of Gregorio Apitong was lawfully justified. The RTC found that the alleged surrounding circumstances of the victim's killing was belied by the several injuries sustained by the victim; that appellant Estrada's act of not surrendering the knife, which was allegedly used in threatening Mary Jane and eventually used in killing the victim, can be taken against him; and, that the unnatural act of appellant Estrada in dragging and dumping the body of the victim indicate the intent to hide the body of the crime. Accordingly, the court *a quo* concluded that herein appellant was guilty beyond reasonable doubt of the crime of homicide.

Hence, appellant Estrada raised this appeal and assigned to the RTC the following errors:

- I. “THE LOWER COURT ERRED IN NOT APPRECIATING THE JUSTIFYING CIRCUMSTANCE OF DEFENSE OF A RELATIVE – WHETHER COMPLETE OR INCOMPLETE.
- II. GRANTING ARGUENDO, THAT THE CRIME OF HOMICIDE WAS COMMITTED, THE LOWER COURT ERRED IN NOT TAKING INTO ACCOUNT THE ATTENDING MITIGATING CIRCUMSTANCES OF VOLUNTARY SURRENDER AND VINDICATION OF A GRAVE OFFENSE.”<sup>[15]</sup>

In his brief<sup>[16]</sup>, appellant reiterates his claim of defense of relative, considering that the victim, Gregorio Apitong was raping appellant Estrada's daughter, Mary Jane, when appellant killed Gregorio. Appellant further argued that, assuming that homicide was committed, the penalty should be lowered to one degree, considering the presence of two mitigating circumstances – voluntary surrender and immediate vindication of a grave offense.

The appellee, meanwhile, through the Office of the Solicitor General, argues in its brief<sup>[17]</sup> the contrary, that is, the justifying circumstance of defense of a relative was not sufficiently proven and that the circumstances presented by evidence show the absence of any mitigating circumstances.

After careful examination of the sets of evidence proffered by the parties, We affirm the appellant's guilt.

As already intimated, appellant interposed defense of a relative as justifying circumstance to free himself of criminal liability. Invoking a justifying circumstance means admitting the criminal act done only that the same was justified.

When an accused admits killing the victim but invokes defense of a relative as justifying circumstance to escape criminal liability, the accused assumes the burden to establish his plea by credible, clear and convincing evidence; otherwise,

conviction would follow from his admission that he killed the victim.<sup>[18]</sup>

Hence, to escape liability, appellant who admitted killing the victim in the name of defense of a relative bears the burden of proving: "(1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) in case the provocation was given by the person attacked, that the one making the defense had no part therein."<sup>[19]</sup> The most essential element that must be proven is unlawful aggression "for if there is no unlawful aggression, there would be nothing to prevent or repel."<sup>[20]</sup>

In this case, appellant argues that the unlawful aggression he prevented was the act of rape being done by the victim to his daughter. Thus, appellant's burden is to prove by credible, clear and convincing evidence that such unlawful aggression, the fact of rape, existed at the time he committed the crime.

In trying to prove the existence of this unlawful aggression, appellant presented his own testimony, his daughter's and Dr. Jeline Duplayna's testimony. Indeed, in the testimonies of appellant and his daughter, both claimed that during the night when the crime was committed, Mary Jane, while being raped by Gregorio, was able to call her father. And, when Jimmy saw Gregorio on top of Maryjane, Jimmy hit Gregorio twice and stabbed the latter on his chest. Then, after seeing this incident, Mary Jane fled to her uncle's house where she slept. Mary Jane even added that she was raped by Gregorio not only on the night he was killed but also on the two previous nights.

However, despite appellant's and his daughter's testimonies, We find that the alleged unlawful aggression is nonexistent, considering that other pieces of evidence not only raised doubts on the existence of the fact of rape but also belies the same.

*First.* The testimony of Dr. Jeline Duplayna<sup>[21]</sup> during cross examination clearly stated that there is likely no possibility of rape considering that only one healed laceration was found in Mary Jane's hymen. A portion of her testimony states:

"Court:

Q: Would it be possible that despite the fact that according to the victim she was raped for three (3) times yet only one healed laceration at 5:00 position was found by you?

A: I don't think so, Your Honor.

Q: Why? Considering that she was raped as claimed, describe what could have been the laceration?

A: It could have been more than one.

Q: It is old healed or fresh?

A: It is healed.

Q: It could be healed?