

## **FOURTH DIVISION**

**[ CA-G.R. CR NO. 35292, August 20, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF – APPELLEE, VS.  
RUBEN GANO Y SORIANO, ACCUSED – APPELLANT.**

### **DECISION**

**GONZALES-SISON, M., J.:**

On appeal before this Court is the 28 June 2012 Decision<sup>[1]</sup> of the Regional Trial Court of Tuguegarao City, Branch 03, finding appellant Ruben Gano<sup>[2]</sup> y Soriano guilty beyond reasonable doubt of Homicide, defined and penalized under Article 249 of the Revised Penal Code, as amended, and sentencing accused-appellant to suffer an indeterminate prison sentence ranging from twelve (12) years of prison mayor maximum as minimum to seventeen (17) years and four (4) months of reclusion temporal medium as maximum and to pay the heirs of victim Joseph Mallillin y Manera the following amounts: Fifty Thousand Pesos (Php50,000.00) as death indemnity; Twenty Five Thousand Pesos (Php25,000.00) as moral damages; Ten Thousand Pesos (Php10,000.00) as temperate damages; and to pay the costs.

In the court of origin, appellant was charged in an Information<sup>[3]</sup> worded as follows:

“That on July 15, 2002, in the City of Tuguegarao, Province of Cagayan and within the jurisdiction of this Honorable Court, accused RUBEN GANO y SORIANO, armed with a knife, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously, stab victim JOSEPH MALLILLIN, son of complainant ADORACION MANERA, inflicting upon him mortal stab-wound that ultimately caused his untimely death on July 25, 2002.

Contrary to law.”

During the arraignment<sup>[4]</sup> on 13 May 2003, accused-appellant, assisted by his counsel Atty. Alexander P. Daran, entered a plea of NOT GUILTY to the Information read in Itawes dialect which the accused speaks and understands. During the pre-trial<sup>[5]</sup> of the case on 17 September 2003, the parties entered into the following stipulation of facts, to wit:

“PROPOSAL FOR THE PROSECUTION:

1. The fact of death of the victim in this case Joseph Mallillin as shown by a photocopy of his death certificate – admitted. 2.

That the accused Ruben Gano killed the victim in this case Joseph Mallillin-admitted with complete self-defense.

## NO PROPOSAL FOR THE DEFENSE.”

In an Order dated 03 September 2004, the trial court provisionally dismissed the case upon motion of the prosecution and without objection of the accused and his counsel as the prosecution failed to present its prosecution witness after several resettings.

On 08 November 2004, an Order was issued by the trial court granting the Motion to Revive the case filed by the private prosecutor.

The prosecution's evidence consists of the lone testimony of Jerry Quilang who was allegedly an eyewitness to the stabbing incident. On the other hand, the defense presented the testimonies of the accused himself and one Juanito Soriano.

We quote the narration of the trial court as follows:

### “The EVIDENCE of the PROSECUTION

The evidence of the prosecution was presented through the sole testimony of Jerry Quilang who was allegedly an eyewitness to the stabbing incident as well as the events preceding it. He testified that at 9:00 p.m. on July 15, 2002 there was a drinking session at the house of one Irineo Alan at Linao West, Tuguegarao City as his group was celebrating their victory in the just concluded barangay elections. In that drinking session were Brgy. Kagawad Romeo Alan, Barangay Tanod Boy Balisi, Ruben Gano, Rosito Battung and Bando Soriano. In the course of the drinking spree, Rosito Battung, who was dosing (*sic*) beside the witness Jerry Quilang. The witness Jerry Quilang and Brgy. Tanod Boy Balisi. When the group was traversing an alley going to Alan Street, Linao West, one Bobing Mora suddenly appeared and slapped Ruben Gano from behind. After he was slapped by Mora, the accused drew his knife thinking it was Joseph Mallillin who slapped him from behind, said accused turned back and stabbed Joseph Mallillin once hitting the latter on the abdomen. The witness Jerry Quilang grapped with the accused Ruben Gano for the knife and was able to grab the weapon from the latter. The accused ran from the scene. The witness and his companions called for police assistance. When some policemen responded, they went to arrest the accused who had run home. The victim Joseph Mallillin was rushed to the Cagayan Valley Medical Center (CVMC) where he was given medical assistance. Unfortunately, he died.

The prosecution rested its case with the aforesaid testimony of lone prosecution witness Jerry Quilang and its documentary evidence consisting of the Medico-Legal Certificate showing the extent of injuries he [the victim] sustained; Death Certificate of the victim Joseph Mallillin; Certification from the Tuguegarao City Police Station and the Sworn Affidavit of prosecution witness Jerry Quilang.

### The EVIDENCE of the DEFENSE

The defense presented as its first witness, the accused Ruben Gano. His

testimony raised self-defense. He admitted the testimony of the prosecution witness Jerry Quilang that there was a victory drinking session on July 15, 2002 at about 9:00 PM in the house of Ben Alan in Brgy. Linao West, Tuguegarao City. He stated that those in attendance at the drinking session were himself, Brgy. Kagawad Jerry Quilang, Barangay Kagawad Rudy Soriano, Romy Alan, Bong Balisi, Cito Battung, Bando Soriano, Ben Alan and Joseph Mallillin. In the course of the drinking session, Cito Battung slept. He was awakened by Brgy. Councilman Romy Alan who instructed him to go and sleep inside the house. When he was awakened, Cito Battung suddenly punched Bando Soriano. The accused was then seated between Cito Battung and Bando Soriano. The accused did not know of any reason for Cito Battung to box Soriano. The two were then pacified and Bando Soriano was coaxed by Jerry Quilang to leave. The two then left the place. The accused followed Soriano and Quilang intending to go home so as not to be involved in any trouble. On his way home, his way was blocked by Bobing Mora who just came from his (Mora's) house. Mora suddenly hit him on the nape for no reason at all. After being hit on the nape, the accused ran away. He was chased by Brgy. Tanod Boy Balisi. After Balisi overtook the accused, he (Balisi) held him by the neck and boxed him on his body. To avoid any further trouble, the accused just continued home. However, as he was walking home, Joseph Mallillin also chased him and upon overtaking the accused, punched him on the ear and kicked him on his thigh. After being boxed and kicked, the accused fell on the ground. Joseph Mallillin drew a bladed weapon and tried to stab the accused. The latter two grappled for possession of the knife. In the course of the grappling for possession of the knife, the accused "accidentally" stabbed the victim Joseph Mallillin. After stabbing Mallillin, the accused decided to give himself up to the police authorities that same day. The defense next presented Juanito Soriano as its witness to corroborate the testimony of the accused Ruben Gano that he merely acted in self-defense when he stabbed the victim.

Soriano testified that he was present during the drinking session on July 15, 2002 in the house of Ben Alan in Linao West, Tuguegarao City to celebrate their victory in the barangay elections. He testified that many persons attended the drinking session including Rosito Balisi, Jerry Quilang, Ruben Gano and others whose names he could not recall. During the drinking session, Rosito Battung dodged and when he awoke, he suddenly boxed Bando Soriano. Fortunately the proverbial cooler heads intervened and the trouble did not escalate because Jerry Quilang pacified Rosito Battung and brought him home. The witness Soriano and the accused Ruben Gano followed Rosito Battung and Jerry Quilang towards the road. On their way, they were met by Bobing Mora who suddenly slapped Ruben Gano without any apparent reason. Gano did not retaliate and the witness advised him to go home but Gano refused, saying he had not done anything wrong. At that juncture, Joseph Mallillin suddenly appeared and upon coming near to Ruben Gano kicked the latter, again for no apparent reason. After kicking Gano, Joseph Mallillin pulled out a bladed weapon. Seeing this, Ruben Gano grappled with Joseph Mallillin for possession the bladed weapon. While the two were grappling, Joseph Mallillin was stabbed. Thereafter, Ruben Gano was

pacified by Bong Balisi and taken away towards the road. When Gano arrived at his home, policemen arrested him.”<sup>[6]</sup>.

After trial, the lower court rendered judgment, the dispositive portion of which reads as follows:

“WHEREFORE, in light of the foregoing, this Court finds the accused RUBEN GANO y Soriano GUILTY beyond reasonable doubt of the felony of Homicide, defined and penalized under Article 249 of the Revised Penal Code, as amended, and hereby sentences him:

1. To suffer the indeterminate prison sentence ranging from twelve (12) years of prison mayor maximum as minimum to seventeen (17) years and four (4) months of reclusion temporal medium as maximum, and 2.

To pay the heirs of Joseph Mallillin y Manera, the amounts of:

- a. P50,000.00 as death indemnity;
- b. P25,000.00 as moral damages;
- c. P10,000.00 as temperate damages; and 3.

To pay the costs.

SO ORDERED.”

In seeking reversal of his conviction, accused-appellant assigns the following errors:

#### I

THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE.

#### II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

In support of his assigned errors, appellant argues that:

1. It was the victim who hit him first and was about to attack him with a knife, hence, he defended himself.
2. There was no provocation on his part for it was the victim who initiated the altercation by initially hitting him on the head and body. Moreover, considering that the victim had a weapon coupled with an evident resolve to inflict injury, it was logical for accused-appellant to do something to protect his being from the peril the victim posed.
3. The court a quo should have first carefully weighed and considered the circumstances indicating the possible innocence of the accused-appellant before

rendering its verdict.

In contrast, the Office of the Solicitor General (OSG) maintains that no reversible error was committed by the trial court. It avers that the appellant, who possessed a bladed weapon, stabbed the victim even though he had already disarmed the latter, therefore demolishing appellant's plea of self-defense because unlawful aggression from the victim has ceased.

We now resolve this case.

An appeal of a criminal case opens its entire records for review, such that the appellate court may review all circumstances favorable to the accused<sup>[7]</sup>, including of course, the testimonies of witnesses and the assessment thereof by the trial court.

As We contend here with conflicting versions of the prosecution and the defense, as reconstructed by witnesses' accounts, it is appropriate to recall the general rule that the trial court's choice of which version to believe is viewed as correct and entitled to the highest respect<sup>[8]</sup>; however, that general rule bends to the exceptional circumstance of the trial court plainly overlooking certain facts of substance and value, which, if properly considered, would affect the outcome of the case<sup>[9]</sup>.

**After painstakingly reviewing the records, We find that the RTC had indeed overlooked crucial facts. Upon proper consideration of those facts, We find cause to reverse the conviction of the accused-appellant and thereby acquit him of the crime charged. We discuss below.**

In criminal cases, the prosecution has the burden of establishing the guilt of the accused beyond reasonable doubt. But once the commission of the act charged is admitted, the burden of proof shifts to the accused, who must now prove the elements of the justifying circumstances cited<sup>[10]</sup>.

Relevantly, the accused who raises self-defense bears the duty to prove this justifying circumstance with clear, satisfactory and convincing evidence; in doing so, he cannot rely on the weakness of the prosecution but on the strength of his own evidence, for even if the evidence of the prosecution were weak it could not be disbelieved after the accused himself admitted the killing<sup>[11]</sup>.

As We have noted, the versions of the prosecution and the defense contradict each other; such versions, however, have their common points, among them that accused had, on that fateful night, been with celebrants drunkenly celebrating a victory party; that after one of the party-goers punched another for waking him, they had gone home; and that on the way home, the accused was then assaulted by one Bobing Mora. The glaring differences between these versions, nonetheless, cannot be ignored.

The prosecution's witness, Jerry Quilang, narrates that Mora slapped accused-appellant from the back, and that the latter retaliated by withdrawing his knife and stabbing the deceased, whom he believed to have hit him. Thereafter, the accused fled and was later arrested.