

SECOND DIVISION

[CA-G.R. CR.-H.C. No. 06452, December 11, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICKY GONZALES Y COS AND RENE GONZALES Y COS, ACCUSED, RICKY GONZALES Y COS, ACCUSED-APPELLANT.

D E C I S I O N

GARCIA, R.R., J.:

Before Us is an appeal from the Decision^[1] dated September 5, 2013 of the Regional Trial Court, Branch 46, Masbate City in Crim. Case No. 11906 finding herein accused-appellant Ricky Gonzales y Cos guilty beyond reasonable doubt of murder defined and penalized under Article 248 of the Revised Penal Code, the dispositive portion of which reads:

WHEREFORE, premises considered, this court finds accused RICKY GONZALES Y COS GUILTY beyond reasonable doubt of the crime of MURDER. Considering the attendant circumstance of voluntary surrender pursuant to Article 63 of the Revised Penal Code, accused is hereby sentenced to an imprisonment of reclusion perpetua. His period of detention is credited in his favor. He is also ordered to pay the heirs of Bobby Solomon the amount of Fifty Thousand Pesos [(P50,000.00)] as moral damage and Twenty-Five Thousand Thousand Pesos (P25,000.00) as nominal damage.

It appears that accused Rene Gonzales y Cos remains at-large despite considerable lapse of time. The case against him is hereby ordered archived pending his arrest.

SO ORDERED.^[2]

THE FACTS

In an Information^[3] dated March 17, 2005 filed before the Regional Trial Court, Branch 46, Masbate City, accused-appellant Ricky Gonzales and his co-accused Rene Gonzales were charged with murder committed as follows:

That on or about 1:00 o'clock in the morning of January 23, 2005, at Sitio Sabang, Brgy. Bantigue, Masbate City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused

conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon the person of one BOBBY SOLOMON, by then and there stabbing him with the use of a knife, hitting him on the chest and on the stomach, thereby inflicting upon him mortal wounds which were the direct and immediate cause of his death.

Contrary to Law.^[4]

During the arraignment on August 3, 2005, appellant, with the assistance of counsel, pleaded not guilty.^[5] Meanwhile, his co-accused Rene Gonzales remains at large.

The prosecution presented four (4) witnesses, namely: eyewitness Leo Garcia^[6]; Dr. Renato Quinto^[7]; PO3 Dandy Ferriol^[8]; and the victim's widow Mary Jane Solomon^[9].

The version of the prosecution may be summarized as follows:

Prosecution eyewitness Leo Garcia testified that in the morning of January 23, 2005, he was sleeping at his house in *Sitio* Sabang, Bantigue, Masbate City. At around 1:00 a.m., he was awakened by the crying of his child whose sleep was, in turn, disturbed by a commotion outside. Garcia got up to investigate and, at the same time, to buy cigarette. He knew that the *sari-sari* store nearby was still open despite the late hour because a benefit dance was being held at the plaza in celebration of the town *fiesta*. The plaza was five (5) meters away from his house and was well lit. Garcia discovered that the commotion came from the house of his neighbor, victim Bobby Solomon. The victim and his nephew, accused Rene Gonzales, were outside taunting each other. This led to accused Rene boxing the victim, who failed to retaliate. Accused Rene's younger brother, appellant Ricky Gonzales, then emerged from the plaza. Without warning, appellant stabbed the victim three (3) times with a knife that was approximately nine (9) inches long. The victim was hit at the left forearm, at the middle of the chest, and at the stomach. When people started arriving to help the victim, appellant and accused Rene made their escape together.^[10]

Medical Officer IV Dr. Renato Quinto was the doctor who admitted the victim at the Masbate Provincial Hospital on January 23, 2005 at 2:30 in the morning. He testified that the victim suffered four (4) injuries on his body, the most fatal of which was the one he sustained at the left upper quadrant that caused perforations of his large and small intestines, as well as his blood vessels. The victim died while in surgery. The injuries sustained by the victim were consistent with a sharp instrument. Based on the position of the injuries, the victim's assailant came from the left, and most likely from the front.^[11] Dr. Quinto was also the one who prepared a Medico-Legal Certificate^[12] dated January 23, 2005 showing that the victim suffered from a stab wound at the upper quadrant and perforations at the transverse colon and at the jejunum. He likewise suffered from massive bleeding due to a transected para aortic

vessel and from hypovolemic shock.^[13]

PO3 Dandy Ferriol testified that he was the investigator in relation to the stabbing of the victim. He personally interviewed prosecution eyewitness Leo Garcia as well as the victim's widow Mary Jane Solomon on January 24, 2005, or the day after the stabbing incident. He also testified that on that same day of January 24, 2005, *Barangay Kagawad* Dario Gomez went to the Masbate City Police Station and turned over the custody of appellant. The *barangay kagawad* told PO3 Ferriol that appellant voluntarily surrendered to him.^[14]

The victim's widow Mary Jane Solomon testified that appellant and accused Rene Gonzales are the nephews of the victim. Because of the stabbing incident, she had to spend P15,000.00 for her deceased husband's hospital bills and an undetermined amount for hospital expenses.^[15] Unfortunately, she was unable to present any receipts in support thereof.

For the defense, appellant^[16] was presented as its lone witness.

Appellant admitted that he stabbed and killed the victim, but only because it was necessary to defend himself. At around 11:00 p.m. of January 22, 2005, appellant arrived at a benefit dance in the plaza of *Sitio Sabang, Barangay Bantigue*, Masbate City. At around 1:00 a.m. of the following day, January 23, 2005, he got tired of dancing so he left the plaza. When he passed by the house of the victim, which was just adjacent to the plaza, the victim went out of his house staring at appellant in a bad way. Appellant saw that the victim was about to strike him with a knife. Fortunately, appellant was able to stab the victim first. When someone fired a warning shot to stop them, appellant ran away but later voluntarily surrendered himself to their *barangay* captain upon knowing that the victim died. A *barangay kagawad* then accompanied him to the Masbate Police Station. Appellant denied that he was with his brother, accused Rene Gonzales, at that time. On cross-examination, appellant admitted that prosecution witness Leo Garcia was present when the stabbing incident occurred, since his house was adjacent to the victim's. Garcia went out of his house at the beginning of appellant's confrontation with the victim.^[17]

In a Decision^[18] dated September 5, 2013, the court *a quo* found appellant guilty beyond reasonable doubt of murder. It ratiocinated that appellant, having admitted that he stabbed and killed the victim, failed to prove that he did so only in self-defense. In any case, his version that it was the victim who committed unlawful aggression was belied by the clear and straightforward testimony of prosecution eyewitness Leo Garcia who categorically identified appellant as the person who stabbed and killed the victim. There being treachery in appellant's sudden and unexpected attack against the victim, the killing was qualified as murder. The pertinent portions of the Decision are quoted:

On the early morning of January 23, 2005 at around one o'clock (1:00 a.m.) in the morning, more or less at *Sitio Sabang, Barangay Bantigue*, Masbate City, co-accused Rene Gonzales had a teasing engagement with victim Bobby Solomon. This teasing leads to a heated argument and quarrel between the two. Victim Solomon is the uncle of the two accused,

their father is the first cousin of the former. This quarrel which is just outside the house of the victim awakens the child of the victim's neighbor who cried. This neighbor Leo Garcia was also awakened, so he decided to go out with dual purposes, to buy cigarettes and to find out what was the commotion is [*sic*] all about. When Leo Garcia got out of his house, he saw Rene Gonzales boxed the victim Bobby Solomon. The house of the victim is just five (5) meters away from the plaza, and so is the house of the witness Leo Garcia.

Accused Ricky Gonzales who was dancing inside the plaza near the gate noticed the commotion. Sensing that his brother was in trouble he came to aid his brother, and in the process stabbed many times Bobby Solomon. The latter was able to parry the first thrust, but he sustained injury in the wrist (Exhibit C paragraph 5-Affidavit of Leo Garcia).

x x x

This was corroborated by the testimony of Dr. Quinto (TSN p5, May 16, 2006).

x x x

Ricky Gonzales was able to immediately came [*sic*] to the rescue of his brother because he was just five (5) meters, more or less away from his brother and Bobby Solomon.

After the stabbing incident he, together with his brother ran away. Accused Ricky Gonzales, later on surrendered to Barangay Kagawad Dario Gomez, who in turn turned over the accused to the Police authorities x x x.

x x x

Based on the foregoing facts, it is certain that accused Ricky Gonzales stabbed the victim to death.

Article 248 of the Revised Penal Code qualifies the killing of a person to murder if committed with some aggravating circumstances. Among the circumstances is treachery as stated in the first paragraph x x x

x x x

Was there treachery in the killing of Bobby Solomon? This court rules in the affirmative. The stabbing of the victim by the accused was so sudden that the victim had no opportunity to defend himself. After being boxed by his brother/co-accused Rene Gonzales, accused Ricky Gonzales came to the aid of his brother. However, this act does not constitute defense of relative since the means he employed to defend his brother above and over that should be employed. It was his brother who boxed the victim. His brother had the [*upper hand*] in the fight.^[19] Why should he used a knife to help his brother is appalling and does not constitute a defense but rather it shows a resolute mind to kill immediately the victim.

It is undisputed that the accused surrendered voluntarily thus a mitigating circumstance was present in the case at bar.^[20]

Hence, this appeal in which appellant raised the following **ASSIGNMENT OF ERRORS**^[21], to wit:

I

THE COURT A QUO GRAVELY ERRED IN NOT GIVING CREDENCE TO APPELLANT'S THEORY OF SELF-DEFENSE; AND

II

ON THE ASSUMPTION THAT APPELLANT IS LIABLE, THE COURT A QUO GRAVELY ERRED IN CONVICTING HIM OF MURDER INSTEAD OF HOMICIDE.

THE ISSUE

The sole issue in the instant case is whether or not appellant's guilt was proven beyond reasonable doubt.

THE RULING

The appeal is bereft of merit.

Appellant contends that the court *a quo* erred in finding him guilty beyond reasonable doubt of the crime of murder despite the fact it was the victim who initiated the attack, forcing appellant to defend himself with a knife.

This fails to persuade.

The elements of murder under Article 248 of the Revised Penal Code are: (1) that a person was killed; (2) that the accused killed him; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) that the killing was not parricide or infanticide.^[22]

In the instant case, there is no question that appellant had intentionally killed the victim. The only question left is whether the said killing was attended by a justifying circumstance, that is, whether appellant killed the victim in self-defense.

The justifying circumstance of self-defense is an affirmative allegation and offers exculpation from liability for crimes only if the same is satisfactorily shown. It is a hornbook doctrine that when the accused invokes self-defense, the burden is shifted to him to prove it by clear, credible and convincing evidence; otherwise, conviction would follow from his admission that he killed the victim.^[23] To do this, the person