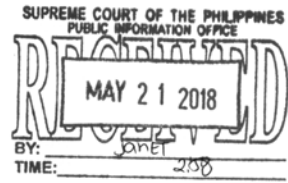




Republic of the Philippines
Supreme Court
 Baguio City



FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 220146

Present:

- versus -

SERENO,* *C.J., Chairperson,*
 LEONARDO-DE CASTRO,**
 DEL CASTILLO,
 PERLAS-BERNABE,*** *and*
 TIJAM, JJ.

**GLEN ABINA y LATORRE and
 JESUS LATORRE y DERAYA,******
Accused-Appellants.

Promulgated:

APR 18 2018

X-----

DECISION

DEL CASTILLO, J.:

On appeal is the December 10, 2014 Decision¹ of the Court of Appeals (CA) in CA-GR. CR HC No. 01302, which affirmed the December 29, 2010 Joint Judgment² of the Regional Trial Court (RTC) of Calbiga, Samar, Branch 33 finding Glen Abina y Latorre (Glen) and Jesus Latorre y Deraya (Jesus) guilty of murder in Criminal Case No. CC-2008-1695, and homicide in Criminal Case No. CC-2008-1696.³

Factual Antecedents

Glen and Jesus were charged with murder for the killing of Anthony Asadon (Anthony) and Rodolfo Mabag (Rodolfo). The Informations read:

* On leave.

** Acting Chairperson per Special Order No. 2540 dated February 28, 2018.

*** Designated as additional member per November 29, 2017 raffle vice J. Jardeleza who recused due to prior action as Solicitor General.

**** In the Resolution dated December 5, 2016, the Court dismissed the criminal cases against Jesus Latorre y Deraya in view of his demise. (See *rollo*, unpaginated)

¹ CA *rollo*, pp. 106-120; penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Ramon Paul L. Hernando and Ma. Luisa C. Quijano-Padilla.

² Records in Crim. Case No. C-2008-1695, pp. 146-159; penned by Acting Presiding Judge Yolanda U. Dagandan.

³ Also referred to as Criminal Case Nos. C-2008-1695 and C-2008-1696, respectively.

[Criminal Case No. CC-2008-1695]

That on or about the 1st day of February, 2008, at around 5:00 o'clock in the afternoon, more or less, in Barangay Concord, Municipality of Hinabangan, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with deliberate intent to kill and with treachery, thereby qualifying the offense to murder, did, then and there, willfully, unlawfully and feloniously attack, assault, shoot, stab and hack several times one ANTHONY ASADON with the use of a long bladed weapon locally known as 'sundang' and unlicensed homemade hand gun with which the accused provided themselves for the purpose, thereby inflicting upon the victim fatal wounds, which resulted to his death.

CONTRARY TO LAW.⁴

[Criminal Case No. CC-2008-1696]

That on or about the 1st day of February, 2008, at around 5:00 o'clock in the afternoon, more or less, in Barangay Concord, Municipality of Hinabangan, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with deliberate intent to kill and with treachery, thereby qualifying the offense to murder, did, then and there, willfully, unlawfully and feloniously attack, assault, shoot, stab and hack several times one RODOLFO MABAG with the use of a long bladed weapon locally known as 'sundang' with which the accused provided themselves for the purpose, thereby inflicting upon the victim fatal wounds, which resulted to his death.

CONTRARY TO LAW.⁵

Glen and Jesus pleaded "Not Guilty"⁶ to the charges against them. Trial on the merits thereafter ensued.

Version of the Prosecution

At about 1:00 p.m. on February 1, 2008, Anthony Asadon (Anthony) and his wife, Jonalyn Asadon (Jonalyn), were at Glen's house for his birthday celebration. During that time, Glen, Jesus, Pio Jongaya, and victims Anthony and Rodolfo Mabag (Rodolfo) were having a drinking spree.⁷

At about 5:00 p.m., Jonalyn and Anthony asked permission to leave the party; however, Glen disapproved of it because they would still buy liquor.⁸

⁴ Records in Crim. Case No. CC-2008-1695, p. 1.

⁵ Records in Crim. Case No. CC-2008-1696, p. 1.

⁶ Records in Crim. Case No. CC-2008-1695, pp. 22-23.

⁷ TSN, June 4, 2009, pp. 7-8; September 10, 2009, p. 5.

⁸ Id. at 12; Id. at 6-7.

When Jonalyn and Anthony proceeded to leave, Glen suddenly took his gun and shot Anthony, hitting his right eye.⁹

When Anthony fell on the ground, Jesus stabbed him with a bolo. Seeing his cousin Anthony being assaulted, Rodolfo drew his bolo and hit Glen at his chin. In turn, Glen and Jesus hacked and stabbed Rodolfo on his arms, forehead and face.¹⁰

Both Anthony and Rodolfo died.¹¹

Version of the Defense

As summarized by the CA, the version of the defense is as follows:

JESUS LATORRE Y DERAYA averred that on February 1, 2008, particularly at 4:00 o'clock in the afternoon, he was in his house; by 5:00 o'clock in the afternoon he went to his farm located about 300 meters away. After a while, he went home. On his way home, he noticed a birthday party in the house of Glen Abina. When he was already in his house, he saw Roberto Jongaya alias Dondon with a gun directed at Anthony Asadon and Rodolfo Mabag. Hence, he admonished Dondon to stop because the two were drunk. Dondon at that time was four meters away from Anthony and Rodolfo while he was about 10 meters when he first saw Dondon aiming the gun. Unfortunately, Dondon did not heed his advice and eventually shot Anthony on the forehead while Rodolfo was hit at the right side of his head, just below his right ear. When the two fell down, Glen and Dondon immediately stabbed the two. Glen used a 22 inches bolo while Dondon used a 26 inches, left handed bolo. After grabbing the bolos from the hands of Glen and Dondon, he placed it inside the sack. He also picked up the gun thrown by Dondon in the cogonal area and kept it in the same sack. Thereafter, he delivered the weapons to Eddie, the Brgy. Captain of Concord. He informed Eddie about the incident. Thereafter, he went home. Glen, who was injured in his right ankle just stayed in his house while Dondon went to the barangay proper.

He was arrested that evening by some barangay tanod and members of the Philippine Army. The military men warned him that if he will not surrender his house will be strafed. He did explain to them that he was not the principal of the crime; that he only helped by carrying the weapons to the Brgy. Captain. However, the military men handcuffed him and brought him to the barangay proper. At the barangay plaza, he was interrogated; they wanted him to admit the commission of the crime. Glen was also arrested. On the other hand, Dondon and Roberto Jongaya escaped.¹²

⁹ TSN, June 4, 2009, pp. 13-16.

¹⁰ TSN, June 4, 2009; pp. 18-23; November 19, 2009, pp. 19-22.

¹¹ TSN, June 4, 2009, pp. 6, 26.

¹² CA rollo, pp. 109-110.

However, during his cross-examination, Jesus admitted that he and Glen killed Anthony and Rodolfo but only to defend themselves.¹³

Ruling of the Regional Trial Court

In its December 29, 2010 Joint Judgment, the RTC convicted Glen and Jesus of murder, for the death of Anthony, and homicide, for the death of Rodolfo. The dispositive portion reads:

WHEREFORE, premises considered, the Court finds the two (2) accused GLEN ABINA y LATORRE and JESUS LATORRE y DERAYA GUILTY BEYOND REASONABLE DOUBT as principals of the crime[s] of:

A. MURDER x x x in Criminal Case No. CC-2008-1695 and x x x hereby sentences them to suffer imprisonment of RECLUSION PERPETUA; to indemnify jointly and solidarily the [h]eirs of Anthony Asadon Php75,000.00 as civil indemnity for his death; Php50,000.00 as moral damages and Php30,000.00 as exemplary damages and to pay the costs of this suit.

x x x x

B. HOMICIDE x x x in Criminal Case No. CC-2008-1696 and x x x hereby sentences them to suffer imprisonment of an indeterminate penalty ranging from TEN (10) YEARS of Prision Mayor as minimum to FOURTEEN (14) YEARS FOUR (4) MONTHS AND ONE (1) DAY of Reclusion Temporal as maximum; to indemnify jointly and solidarily the [h]eirs of Rodolfo Mabag Php50,000.00 as civil indemnity for his death and to pay the costs of this suit.

x x x x¹⁴

The RTC did not consider the defense's claim of self-defense. It held that their denial of their involvement in the killing was inconsistent with their claim of self-defense; they in turn failed to prove unlawful aggression on the part of the victims which is an essential element of self-defense. Instead, the RTC gave weight to the positive, credible, and logical testimonies of the prosecution witnesses who positively identified Glen and Jesus as the persons who killed Anthony and Rodolfo.

The RTC further ruled that the killing of Anthony was attended by treachery, which qualified the crime to murder. It explained that Anthony was attacked in a sudden and unexpected manner that afforded him no opportunity to defend himself. It also found conspiracy between Glen and Jesus in killing

¹³ TSN, May 7, 2009, p. 20.

¹⁴ Records in Crim. Case No. CC-2008-1695, pp. 158-159.

Anthony as their concerted acts showed unity of purpose and design.

On the other hand, the RTC held that the killing of Rodolfo only amounted to homicide. It explained that Rodolfo was hacked and stabbed only after he joined the melee. According to the RTC, in the absence of treachery, appellants were only liable for homicide for the killing Rodolfo.

Ruling of the Court of Appeals

The CA concurred with the finding of the RTC that appellants failed to establish the elements of self-defense, especially the presence of unlawful aggression. Like the RTC, it noted that Jesus' denial was inconsistent with their claim of self-defense. The CA ratiocinated that a person who invokes self-defense necessarily admits authorship of the crime which is completely inconsistent with their defense of denial.

The CA also stressed that aside from failing to support their defense of denial, Jesus even admitted, during cross-examination, that he and Glen killed the victims. Necessarily, such admission would work against them.

The CA similarly ruled that the killing of Anthony was treacherous which qualified the crime to murder. It held that Glen and Jesus deprived Anthony of means to repel the sudden and unexpected attack against him. It pointed out that Glen suddenly shot Anthony when the latter was about to leave, which rendered him (Anthony) defenseless; and subsequently, Jesus joined the fray by stabbing him. Taken together, the means employed by Glen and Jesus assured them of no risk from any defense that Anthony might have adopted against them.

With regard to the killing of Rodolfo, the CA agreed with the RTC that the same only amounted to homicide because of the absence of treachery. It ruled that Rodolfo was attacked only after he came to the aid of Anthony. Given these circumstances, the CA concluded that treachery did not attend the killing of Rodolfo.

Hence, this appeal.

In our Resolution¹⁵ dated December 5, 2016, the Court already dismissed the case against Jesus in view of his death. Hence, we will only resolve the issue of Glen's culpability.

¹⁵ *Rollo*, unpaginated.

Issue

Whether the CA correctly affirmed the conviction of Glen for the crimes of murder and homicide.

Ruling

In criminal cases, the prosecution has the burden to establish the guilt of the accused beyond reasonable doubt. Nevertheless, when the accused invokes self-defense, he or she has the burden to prove such justifying circumstance by clear and convincing evidence. Here, the defense miserably failed to discharge its burden to prove self-defense. Its defenses of denial and self-defense were diametrically opposed to each other. In denial, one disavows any involvement in the crime. In contrast, in claiming self-defense, one admits of his/her participation in the crime only that it was done in self-defense. Moreover, no specific details on the claim of self-defense was advanced which, incidentally, was belatedly asserted only during the cross-examination of Jesus. Absent any clear and convincing evidence to establish self-defense, the same cannot be appreciated in favor of Glen.¹⁶

In view of the admission on the part of the defense of having killed the victims and the testimonies of the prosecution witnesses categorically and positively identifying Glen as the author of the crime, we entertain no doubt as to his culpability.

However, we find that Glen should only be held liable for homicide for the killing of Anthony instead of murder, there being no proof that treachery attended the commission of the crime, contrary to the findings of both the RTC and the CA.

Article 14(16) of the Revised Penal Code defines treachery in this manner:

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

There are two requirements in order that treachery may be appreciated: (1) the victim was in no position to defend himself or herself when attacked; and, (2)

¹⁶ *People v. Tuardon*, G.R. No. 225644, March 1, 2017.



the assailant *consciously* and *deliberately* adopted the methods, means, or form of one's attack against the victim.¹⁷

In *People v. Vilbar*,¹⁸ the Court held that there is no treachery when the attack against the victim was impulsive, even if the same was sudden and unexpected. It added that treachery cannot be appreciated where the accused did not make any preparation to kill the victim in such a way that he or she insures the commission of the crime, or that it was impossible, or at the least, difficult for the victim to retaliate or defend himself or herself.

Similarly, in *Rustia, Jr. v. People*,¹⁹ the Court elucidated that in order for treachery to be appreciated, it should not be based on the sole fact that the victim was unable to defend himself or herself. The prosecution must establish the conscious adoption on the part of the accused of such mode of attack that would result to the killing without any risk to the accused.

In *People v. Calinawan*,²⁰ the Court again stressed that mere suddenness or unexpectedness of the attack is not sufficient to establish treachery. It ruled that "treachery could not be presumed and must be proved by clear and convincing evidence or as conclusively as the killing itself."²¹ The prosecution must describe the whole scenario especially the manner of the killing in order to deduce the presence (or absence) of treachery.

In this case, while Glen suddenly and unexpectedly attacked Anthony, there was no showing that he deliberately and consciously adopted such mode of attack in order to facilitate the killing without any risk to himself arising from any defense that Anthony might have adopted.

Glen suddenly shot Anthony in the presence of the latter's wife and the other guests at the party. If Glen deliberately intended that no risk would come to him, he could have chosen another time and place to attack Anthony. As it is, the location and time of the attack did not discount the possibility of retaliation coming from the other guests. In addition, the shooting and stabbing incident transpired at around 5:00 p.m. or during such time that Glen could still be easily seen and recognized as the perpetrator of the crime. From all indications, it thus appeared that Glen did not consciously intend to employ a particular mode of attack to kill Anthony. The attack was a spur of the moment decision caused by sheer annoyance when Anthony and his wife left while the party was still ongoing.

¹⁷ *People v. Calinawan*, G.R. No. 226145, February 13, 2017.

¹⁸ 680 Phil. 767, 785-786 (2012).

¹⁹ G.R. No. 208351, October 5, 2016, 805 SCRA 311.

²⁰ *Supra*.

²¹ *Id.*, citing *People v. Silva*, 378 Phil. 1267 (1999).

As such, in the absence of the qualifying circumstance of treachery, the crime committed was only homicide.

Under Article 249 of the Revised Penal Code, the prescribed penalty for homicide is *reclusion temporal*, which ranges from twelve (12) years and one (1) day to twenty (20) years. Pursuant to the Indeterminate Sentence Law, the maximum term to be imposed shall be based on the attending circumstances, and the minimum term of the sentence shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code,²² which is *prision mayor* which ranges from six (6) years and one (1) day to twelve (12) years.

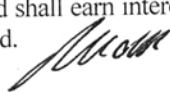
There being no modifying circumstance which attended the killing of both Anthony and Rodolfo, we hereby impose on Glen the indeterminate penalty of seven (7) years and four (4) months of *prision mayor* as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* as maximum on each count of homicide.

Finally, pursuant to prevailing jurisprudence, the Court hereby orders Glen to pay the heirs of Anthony and Rodolfo civil indemnity, moral damages, and temperate damages in the amount of ₱50,000.00 each. The legal interest of 6% *per annum* shall be imposed on all these awards from the finality of this Decision until paid in full.²³

WHEREFORE, the appeal is **DISMISSED**. The assailed December 10, 2014 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 01302 is **AFFIRMED** with the following **MODIFICATIONS**:

(1) Accused-appellant Glen Abina y Latorre is found **GUILTY** of two counts of homicide for the killing Anthony Asadon and Rodolfo Mabag. He is sentenced to suffer the indeterminate penalty of seven (7) years and four (4) months of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum, for each count of homicide; and,

(2) Accused-appellant Glen Abina y Latorre is **ORDERED** to pay the respective heirs of Anthony Asadon and Rodolfo Mabag moral damages, temperate damages, and civil indemnity in the amount of ₱50,000.00 each. All these damages awarded shall earn interest of 6% *per annum* from finality of this Decision until fully paid.



²² *People v. Calinawan*, supra note 17.

²³ *People v. Calinawan*, G.R. No. 226145, February 13, 2017.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

(On leave)
MARIA LOURDES P. A. SERENO
Chief Justice


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


NOEL GIMENEZ TIJAM
Associate Justice


ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
*Acting Chief Justice**



* Per Special Order No. 2539 dated February 28, 2018.