



Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

RAFAEL NADYAHAN,
 Petitioner,

G.R. No. 193134

Present:

-versus-

VELASCO, JR., J.,
Chairperson,
 PERALTA,
 PEREZ,
 REYES, and
 JARDELEZA, JJ.

PEOPLE OF THE PHILIPPINES,
 Respondent.

Promulgated:

March 2, 2016

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[Signature]

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RESOLUTION

PEREZ, J.:

For review is the Decision¹ of the Court of Appeals dated 17 December 2009 affirming the Judgment² dated 5 February 2008 of the Regional Trial Court (RTC), Branch 34 of Lagawe, Ifugao finding petitioner Rafael Nadyahan guilty beyond reasonable doubt of homicide.

In an Information³ filed by the Assistant Provincial Prosecutor on 2 July 2004, petitioner was charged with homicide, thus:

That on or about the evening of May 26, 2004, at Banaue, Ifugao and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife and with intent to kill DID then and there willfully, unlawfully, and feloniously attack and stab one Mark Anthony D.

¹ Rollo, pp. 31-41; Penned by Associate Justice Amelita G. Tolentino with Associate Justices Estela M. Perlas-Bernabe (now a member of the Court) and Stephen C. Cruz concurring.
² Records, pp. 157-170; Presided by Judge Ester L. Piscoso-Flor.
³ Id. at 1.

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Pagaddut inflicting multiple stab wounds on his body that caused his death thereafter.

When arraigned, petitioner pleaded not guilty to the charge.

The defense manifested at pre-trial that while petitioner indeed stabbed the victim, he did so in self-defense. For this reason, a reverse trial, upon agreement of the parties, was conducted with the defense presenting its evidence first.

The defense presented petitioner himself as its principal witness and a certain Pedro Binwag who sought to corroborate the latter's statement.

Their version goes:

In the evening of 26 May 2004, petitioner was driving his motorcycle on the way to Poblacion with Mark Apilis at his back. As they reached the marker of the junction road going to Bontoc, they were flagged down by Marcial Acangan (Acangan), who was then accompanied by Elias Nabejet (Nabejet), Moreno Binwag (Binwag) and Mark Pagaddut (Pagaddut). Acangan asked petitioner for a ride home and the latter readily obliged. Acangan further asked that they be treated to a drink. Petitioner refused and explained that he had already spent his last money on drinks earlier in the day. This angered Acangan. He slapped petitioner on the forehead and kicked his foot. Petitioner did not back down. Instead, he got off his motorcycle and prepared to fight Acangan. At that instance, he saw Acangan's companions pick up pieces of wood. Petitioner then ran towards Apilis and instructed the latter to start the engine of the motorcycle. Before petitioner could leave, he was struck on the back with a piece of wood by Nabejet. Petitioner impulsively took his knife from the windshield of the motorcycle and ran to the direction of his house. Acangan's group followed him. Upon reaching the parking area of the KMS Line, petitioner was met by Binwag. Petitioner even managed to ask Binwag why his group was ganging up on him when he was hit by Pagaddut with a belt buckle. As petitioner was starting to lose consciousness, he thrust his knife and stabbed Pagaddut before both of them fell down. Petitioner then got up, wiped his face and prepared to go home. He met Apilis who was driving his motorcycle. Apilis refused to go with him so petitioner drove the motorcycle away and proceeded towards the house of a congressman. Petitioner then spent four days in Barangay O-ong before going to San Jose



City in Nueva Ecija to have his wounds treated. Finally, he went back to Ifugao to surrender.⁴

Pedro Binwag witnessed a commotion while he was waiting for a jeepney near the junction road. He saw one person armed with a knife and running towards Bontoc while he was being chased by two men. The person holding a knife was eventually cornered by three men and he was struck in the head by a club. While he was about to fall down, he was bumped by another man holding a swinging object, causing the latter to fall. Sensing danger, Pedro Binwag immediately left the area.⁵

Petitioner presented a medical certificate⁶ issued by the hospital in San Jose City to prove that he suffered a lacerated wound on his forehead.

The prosecution presented Acangan and Nabejet whose version portrayed petitioner as the aggressor. Acangan narrated that he and Pagaddut had just come from Viewer's Live Band located at the market where they had a few drinks. Pagaddut went inside the cab of a tricycle with Acangan as driver. While Acangan was about to start the engine, petitioner and Apilis, who were riding a motorcycle, approach them. After saying that he has no problem with Pagaddut, petitioner suddenly wielded a knife. Acangan ran and petitioner chased him around the tricycle. Pagaddut alighted from the tricycle cab and tried to start the motorcycle engine. When petitioner saw Pagaddut, he kicked the latter in the chest. Petitioner turned his ire on Pagaddut and stabbed his upper right buttock. Nabejet came and tried to hit petitioner with a piece of wood but he missed. Petitioner, in turn chased Nabejet. Acangan followed them and upon reaching the station of the KMS Line, he saw petitioner pull the knife from Pagaddut's body. Acangan brought Pagaddut to the hospital. Pagaddut expired at the hospital.⁷

Nabejet recounted that he had just come from a wake and was near Viewer's Live Band when he saw petitioner, who was armed with a knife, standing near Pagaddut. He took a piece of wood nearby and approached Pagaddut. He then saw petitioner chase Pagaddut. He saw petitioner stab Pagaddut in the back causing the latter to fall down. Petitioner continued stabbing Pagaddut but the latter was able to parry the blows. Nabejet tried to

⁴ TSN, 14 March 2005, pp. 6-18.

⁵ TSN, 5 July 2005, pp. 7-10.

⁶ Records, p. 28.

⁷ TSN, 19 April 2006, pp. 3-11.

hit petitioner with a piece of wood but he missed. Petitioner turned his attention to Nabejet and chased him. Nabejet was able to escape.⁸

According to the Certificate of Death, Pagaddut sustained the following injuries:

1. Multiple Stab Wounds, Penetrating, perforating
 - a. Right infraclavicular, 7 cm
 - b. Right anterior axillary fold, 5 cm
2. Stab wound, penetrating 3 cm. base of neck right
3. Stab wound, lateral aspect upper arm, 2 cm.⁹

Dr. Antonio Ligot testified that the victim had three stab wounds: 1) one was perforating and penetrating wound on the anterior chest wall on the right side; 2) other is perforating and penetrating stab wound at the base of the right side of the neck; and 3) one was a stab wound on the right upper arm.¹⁰

Finding an incomplete self-defense, the trial court found petitioner guilty beyond reasonable doubt of homicide. The dispositive portion reads:

WHEREFORE, there being an incomplete self-defense, ACCUSED, Rafael Nadyahan is found **GUILTY** beyond reasonable doubt of Homicide. Pursuant to Article 69 of the Revised Penal Code and applying the Indeterminate Sentence Law, he is hereby sentenced to suffer the penalty of imprisonment of four (4) years and two (2) months of prision correccional medium, as minimum, to eight (8) years of prision mayor minimum, as maximum. He is likewise ordered to pay the heirs of the victim, Mark Anthony D. Pagaddut, the amount of Fifty Thousand (P50,000.00) Pesos as civil indemnity.¹¹

The trial court lent credence to the version of the defense that petitioner is not the aggressor. However, the trial court found that there is an incomplete self-defense on the part of petitioner. Particularly, the trial court ruled that based on the wounds sustained by the victim, the means used by petitioner to prevent or repel the attack was not reasonable. In the imposition of penalty, the trial court considered incomplete self-defense as a

⁸ TSN, 1 August 2006, pp. 3-7.

⁹ Records, p. 7.

¹⁰ TSN, 22 March 2006, pp. 3-4.

¹¹ Records, p. 170.

privileged mitigating circumstance and voluntary surrender as an ordinary mitigating circumstance.

On 17 December 2009, the appellate court rendered its decision affirming petitioner's conviction.

Petitioner maintains that the court a quo gravely erred: (1) in ruling that there is an incomplete self-defense; and (2) in sustaining the penalty imposed by the trial court without considering the circumstances favorable to accused.¹²

In its Comment,¹³ the Office of the Solicitor-General (OSG) defends the ruling of the appellate court that there is incomplete self-defense. However, the OSG recommends the modification of the penalty to *arresto mayor* in its medium period to *prision correccional* minimum.

Case law has established that in invoking self-defense, whether complete or incomplete, the *onus probandi* is shifted to the accused to prove by clear and convincing evidence all the elements of the justifying circumstance, namely: (a) unlawful aggression on the part of the victim; (b) the reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself.¹⁴

We agree with the trial court that there was unlawful aggression on the part of the victim and lack of sufficient provocation on the part of petitioner. We quote the pertinent portion of the decision of the trial court:

After a thorough evaluation of the evidence and testimonies from both parties, the court gives more weight to the account that the accused was not the aggressor. His narration that Marcial Acangan requested him to take Marcial Acangan home was supported by the statement in the affidavit of Marcial where the accused said "MIID PROBLEMA INE TE BARKADA HI MARCIAL" (THERE IS NO PROBLEM WITH THAT BECAUSE MARCIAL IS A FRIEND). The records do not disclose previous conversation in Marcial's affidavit to which accused replied with such a statement but it jibes with the account of the accused that Marcial requested him to take the latter home. It is illogical that after saying that, accused alighted from the motorcycle and chased his friend with a knife without any provocation. There was also no mention in Marcial's affidavit

¹² *Rollo*, pp. 10-12.

¹³ *Id.* at 58-65.

¹⁴ *People v. Tabuelog*, 566 Phil. 297, 304 (2008).

that accused kicked and stabbed the victim. He narrated it in his oral testimony because it was in the affidavit of the other witnesses. We must bear in mind that Marcial was the companion of the victim as early as when they were inside Viewer's Live Band and was continuously in close proximity with the victim until the chase started so it is improbable that he did not mention such incident to the police if it indeed happened. As to the testimony of the other witness for the prosecution, Eleazar Nabejet, he was presented to prove lack of sufficient provocation on the part of the victim yet in his testimony he never mentioned any kicking incident. It is most likely that he arrived late at the scene to have witnessed the beginning of the altercation and without personal knowledge to judge who the aggressor was. He does not even have an accurate grasp of the time of the incident relative to the time they left the house where the wake was, saying that they left the house where the wake was, saying that they left about 9:00 o'clock and later saying that it was perhaps at 9:55 so that if they reached the road it was 10:00 o'clock. Finally Dr. Ligot stated in his testimony that there was no stab wound on the lower back portion of the victim, and that the injuries sustained by the victim were frontal wounds. This will explain the fact why Marcial Acangan, the first witness for the prosecution offered to answer when asked why he did not mention in his affidavit the stabbing incident in front of Viewer's Live Band. This testimony, supported with physical evidence impeaches the testimonies of the two earlier witnesses for the prosecution. With the inconsistencies of the testimonies of the witnesses for the prosecution, the court concludes that the oral testimony of Marcial Acangan is not credible and he adapted it from the story narrated by the other witnesses. With the foregoing, the court gives full credence to the testimony of the accused that he was not the aggressor.

Another factor which contributed to the failure of the cause of the prosecution is the fact that not one of the prosecution witnesses had seen the exchange of blows between the accused and the victim. The prosecution evidence failed to prove the details on how the stabbing took place that led to the death of the victim. In fact the first witness for the prosecution who was supposed to have seen the accused stab the victim and whose testimony will prove that the accused inflicted the fatal wounds on the victim admitted in his testimony that he saw only the "last pull of the knife" and then accused went to his motorcycle. It appeared that during the span of time that the accused and the victim were facing each other and exchanging blows, the witnesses for the prosecution were not around to see what happened. Marcial stated that he noticed Moreno Binwag at the site of the incident. Eleazar Nabejet said he was not around as he was running back to where the wake was using the pathway near the Viewer's Live band. Moreno Binwag was not presented as witness. The evidence of both parties however, are one in saying that there was a chasing incident, one after the other, a few meters from each other. The court finds it strange that not one of the prosecution witnesses had seen the exchange of blows between the accused and the victim when they were only a few meters away from each other. Mr. Moreno Binwag who could have seen it all as he was the alleged companion of the victim in attacking the accused near the KMS Lines was not presented[.] In effect, the claim of the accused corroborated by his witness, Pedro Binwag, that the group of the victim were the aggressors is undisputed.



x x x x

We go next to the other requirement of self-defense to qualify as justifying circumstance, lack of sufficient provocation on the part of the person defending him. The same set of testimonies may be appreciated to determine if the accused did not provide sufficient provocation. The court rules and so holds that there was no sufficient provocation on the part of the accused to invite the attack from Marcial Acangan and his companions. In fact he acceded (sic) to the request of Marcial to take him home. His subsequent refusal or failure to buy drinks as requested definitely is not sufficient provocation for the attack by the group of the victim.¹⁵

Petitioner defends the use of a knife against four (4) men who were armed with a belt buckle and a club. Petitioner claims that since the aggressors were ganging up on him, he was put in a situation where he could not control or calculate the blows, nor could he have had time to reflect whether to incapacitate the victim or hit the less vital part of his body. Petitioner asserts that a penalty lower by two degrees under Article 69 of the Revised Penal Code is proper, assuming without admitting, that the evidence warrants a conviction.

The means employed by the person invoking self-defense contemplates a rational equivalence between the means of attack and the defense.¹⁶

The following circumstances, as cited by the appellate court, negate the presence of a reasonable necessity of the means employed to prevent or repel it:

First, there is intrinsic disproportion between a knife and a belt buckle. Although this disproportion is not conclusive and may yield a contrary conclusion depending on the circumstances, we mention this disproportionality because we do not believe that the circumstances of the case dictate a contrary conclusion.

Second, physical evidence shows that the accused-appellant suffered only a lacerated wound on the forehead. Contrary to what the accused-appellant wishes to imply, he could not have been a defender reeling from successive blows inflicted by the victim and Binwag.

Third, the victim Pagaddut and his companions were already drunk before the fatal fight. This state of intoxication, while not critically material to the stabbing that transpired, is still material for purposes of

¹⁵ Records, pp. 165-168.

¹⁶ *Dela Cruz v. People*, G.R. No. 189405, 19 November 2014.



defining its surrounding circumstances, particularly the fact that a belt buckle and a piece of wood might not have been a potent weapon in the hands of a drunk wielder.

Fourth, and as the trial court aptly observed, the knife wounds were all aimed at vital parts of the body, thus pointing a conclusion that the accused-appellant was simply warding off belt buckle thrusts and used his knife as a means commensurate to the thrusts he avoided.

To be precise, the accused-appellant inflicted on the victim: two penetrating and perforating stab wounds, one at the right infraclavicular, 7 cms. deep, and at the right anterior axillary fold, 5 cms. deep, another was at the base of the neck, 5 cms. deep, and a last one was in the lateral aspect upper arm, 2 cms. deep. The depth of these wounds shows the force exerted in the accused-appellant's thrusts while the locations are indicative that the thrusts were all meant to kill, not merely disable the victim, and thereby avoid his drunken thrusts.¹⁷

In sum, we do not find any error in the Court of Appeals' ruling with respect to incomplete-self defense to warrant its reversal. However, we find the need to modify the penalty it imposed which is four (4) years and two (2) months of *prision correccional* medium, as minimum, to eight (8) years of *prision mayor* minimum, as maximum.

Article 249 of the Revised Penal Code prescribes for the crime of homicide the penalty of reclusion temporal, the range of which is twelve (12) years and one (1) day to twenty (20) years. Under Article 69 of the Revised Penal Code, the privileged mitigating circumstance of incomplete self-defense reduces the penalty by one or two degrees than that prescribed by law. There being an incomplete self-defense, the penalty should be one (1) degree lower or from *reclusion temporal* to *prision mayor* to be imposed in its minimum period considering the presence of one ordinary mitigating circumstance of voluntary surrender pursuant to Article 64(2).

Applying the Indeterminate Sentence Law, the maximum of the penalty shall be *prision mayor* minimum, the proper period after considering the mitigating circumstance, which has a range of six (6) years and one (1) day to eight (8) years. The minimum penalty is the penalty next lower in degree which is *prision correccional* in any of its periods, the range of which is six (6) months and one (1) day to six (6) years. Thus, the trial court correctly sentenced petitioner to four (4) years and two (2) months of *prision correccional* medium, as minimum to eight (8) years of *prision mayor* minimum, as maximum.

¹⁷ Rollo, pp. 37-38.

WHEREFORE, the petition is **DENIED** and the Decision and Resolution of the Court of Appeals in CA-G.R. CR No. 31643 dated 17 December 2009 and 21 July 2010, respectively, are **AFFIRMED**.


Costs against petitioner.

SO ORDERED.

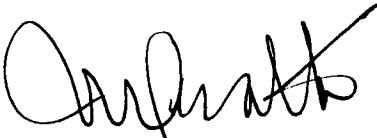


JOSE PORTUGAL PEREZ
Associate Justice


WE CONCUR:




PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice




BIENVENIDO L. REYES
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

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



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice