



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 29, 2020** which reads as follows:*

“G.R. No 249730 – (Reynaldo Ombrog y Sauro v. People of the Philippines)

Before this Court is a petition for review, seeking to nullify the Decision¹ dated August 31, 2018 and Resolution² dated August 20, 2019 of the Court of Appeals-Cebu City (CA) in CA-G.R. CEB CR No. 02601 which found Reynaldo Ombrog y Sauro (petitioner) guilty of the crime of homicide.

An eyewitness, Melvin Medice (Melvin), narrated that at around 11:30 p.m. of February 7, 2008, Joel Ombrog y Sauro (Joel) and a certain Michael were playing billiard games in Purok 4, Barangay Balite, San Isidro, Northern Samar.³

Ricarte Vacunawa (Ricarte), however, initiated a heated argument with Joel while the former was watching the game together with a companion. As the game went on, Ricarte heckled Joel, prompting the latter to implore the former to stop the same. However, such request fell on deaf ears as Ricarte continued to annoy Joel.⁴

As a result of such incessant taunting, Joel kicked Ricarte and struck him with a billiard cue stick. In retaliation, Ricarte stabbed Joel with a knife. Joel then flee towards the street outside the billiard hall. Ricarte subsequently chased Joel, but failed to catch up with him.

¹ Penned by Associate Justice Emily R. Aliño-Geluz, with Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap, concurring; *rollo*, pp. 27-40.

² *Id.* at 49-50.

³ *Id.* at 27.

⁴ *Id.* at 28.

Joel, while fleeing from the scene, was able to inform his brother, herein petitioner, that he was stabbed.⁵

When Ricarte chanced upon petitioner, the former shifted his ire towards the latter and threateningly asked him, "You also?" Ricarte then attempted to stab petitioner.⁶

Subsequently, Ricarte returned to the billiard hall where he was stabbed in the chest by the petitioner, causing him to fall on his back. While Ricarte was lying on the ground, petitioner mounted on top of his waist and stabbed him multiple times on his chest. Afterwards, petitioner pushed the lifeless body of Ricarte to the shoulder of the highway.⁷

Melvin positively identified the petitioner as the perpetrator of the crime as he was acting as the referee in the game played by Joel and Michael.⁸

Dr. Delmer Araba, municipal health officer of San Isidro, Northern Samar, identified the Autopsy Report and Post-Mortem Findings which he prepared when he examined the body of Ricarte. He corroborated Melvin's statement that Ricarte suffered from multiple stab wounds on his chest area with one stab perforating his heart and three more perforating his chest cavity.⁹

For his defense, petitioner narrated that he was at home at around 11:30 p.m. of February 7, 2008 when he heard his brother Joel having a heated altercation with Ricarte near the billiard hall. Thereat, he tried to mediate between the two and even offered to accompany them to the barangay captain to settle their differences. The two heeded to such offer and they left Ricarte outside the billiard hall.¹⁰

However, petitioner and Joel chanced upon Ricarte again, but this time, with a companion and both of them were intoxicated. According to petitioner, Ricarte uttered "*naba ito okay diri man naato*" (strike him since he will not put up a fight). Thereafter, Ricarte got a knife from his companion and went to Joel. The latter pleaded him to stop, which was heeded to by Ricarte. However, the latter began stabbing petitioner until the latter fell on the floor. Thereafter, Ricarte stabbed Joel after catching up with him. The two grappled for

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id. at 27.

⁹ Id. at 29.

¹⁰ Id.

the knife; and as a result thereof, they fell to the ground. It was at this point that Joel gained possession of the knife and stabbed Ricarte.¹¹

After the incident, petitioner and his brother-in-law facilitated the surrender of Joel before the Municipal Hall of San Isidro.¹²

Thus, an Information for Homicide was filed against Joel and petitioner, which reads:

That on or about the 7th day of February 2008 at about 11:30 o'clock (sic) in the evening at Barangay Balite, San Isidro, Northern Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and armed with a knife, conspiring, confederating and mutually helping each other, did then and there, willfully, unlawfully and feloniously attack, assault and stab one RICARTE MASDO y VACUNAWA, inflicting upon him multiple stab wounds on the different parts of his body which wounds caused the instantaneous death of the latter.

CONTRARY TO LAW."¹³

Upon arraignment, petitioner pleaded not guilty to the crime as charged. Joel, however, was neither arraigned nor arrested.¹⁴

In a Decision¹⁵ dated July 1, 2015, the RTC found the petitioner guilty beyond reasonable doubt of the crime of homicide. In ruling so, the RTC relied on the testimony of Melvin, who positively identified the petitioner as the perpetrator of the crime and did not give credence to petitioner's assertion that it was his brother Joel who stabbed Ricarte. The *fallo* thereof reads:

In light of the foregoing, the Court finds accused Reynaldo Ombrog y Sauro GUILTY beyond reasonable doubt of Homicide. Considering the absence of any modifying circumstance in the commission of homicide, the indeterminate penalty to be imposed is twelve (12) years of Prision Mayor minimum to seventeen (17) years, four (4) months of Reclusion Temporal, maximum.

As regards accused Joel Ombrog y Sauro, considering that he is still at large despite the issuance of the warrant for his arrest and in order that this case will not appear pending indefinitely in the Court's docket, let the records of the case be sent to the

¹¹ Id. at 29-30.

¹² Id. at 30.

¹³ Id. at 70.

¹⁴ Id. at 70-71.

¹⁵ Id. at 70-77.

ARCHIVES without prejudice to its reopening once said accused is apprehended or has surrendered.

SO ORDERED.¹⁶

On appeal, petitioner raised the justifying circumstances of self-defense and defense of a relative.¹⁷

In a Decision¹⁸ dated August 31, 2018, the CA upheld the conviction of petitioner. The CA found that the sudden changes in petitioner's defenses is prejudicial to his credibility. Nevertheless, the CA continued to discuss whether the justifying circumstances of self-defense and defense of a relative find application in this case. Ruling in the negative, the CA observed that the element of unlawful aggression, common to both circumstances, is clearly wanting. Even the privileged mitigating circumstance of incomplete defense of a relative was not appreciated in favor of petitioner as the absence of the element of unlawful aggression is crucial in determining the circumstance of defense, whether complete or incomplete.

The dispositive portion reads:

WHEREFORE, premises considered, the [Decision] dated July 1, 2015, of the Regional Trial Court, Branch 23, Allen, Northern Samar, in Criminal Case No. A-2553, finding herein accused-appellant Reynaldo Ombrog y Sauro **GUILTY** beyond reasonable doubt of Homicide, is hereby **AFFIRMED** in toto.

SO ORDERED.¹⁹

Hence, this petition.

Petitioner argues that his guilt was not proven beyond doubt as Melvin's positive identification is unreliable considering his uncertainty as to petitioner's identity. Petitioner explains that Melvin merely depicted him as the person "wearing green," which is too generic. Petitioner likewise points out that Melvin failed to narrate in his testimony as to how petitioner came into possession with the weapon used for the killing of Ricarte.

Moreover, petitioner asserts that the mitigating circumstances of passion and obfuscation should be appreciated in his favor.

¹⁶ Id. at 77.

¹⁷ Id. at 32.

¹⁸ Supra note 1.

¹⁹ Id. at 39.

The petition is denied.

Well-settled is the rule that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts,²⁰ none of which exists in this case.

Nevertheless, this Court sustains the findings of the courts *a quo* as to the credibility of Melvin's testimony.

Jurisprudence dictates that evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies.²¹

Notably, the RTC and the CA observed Melvin's straightforward and resolute manner of identifying the petitioner. Contrary to petitioner's baseless allegations, Melvin categorically and decisively identified him as the person who killed Ricarte.

Neither can the mitigating circumstance of passion and obfuscation be appreciated in favor of petitioner.

It is a matter of law that when a party adopts a particular theory and the case is tried and decided upon that theory in the court below, he will not be permitted to change his theory on appeal. The case will be reviewed and decided on that theory and not approached and resolved from a different point of view. To permit a party to change his theory on appeal will be unfair to the adverse party.²²

In this case, it must be considered that petitioner changed his defense theory for three times — from denial, justifying circumstances, and mitigating circumstances. As he is prohibited from setting up a different theory, this Court refuses to review and evaluate the facts of the case.

²⁰ *Meralco Industrial Engineering Services Corp. v NLRC*, 572 Phil. 94, 117 (2008).

²¹ *People v. Ocdol*, 741 Phil. 714-715 (2014).

²² *Toledo v. People of the Philippines*, G.R. No. 158057, September 24, 2004.

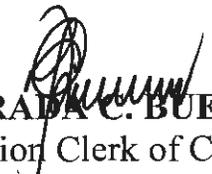
Lastly, in line with current jurisprudence,²³ the following monetary awards shall be granted in favor of Ricarte's heirs, to wit: (1) ₱50,000.00 as civil indemnity; and (2) ₱50,000.00 as moral damages. Also, interest at the rate of 6% per annum is imposed on all monetary awards from the date of finality of this judgment until fully paid.

WHEREFORE, the instant petition is hereby **DENIED**. The Decision dated August 31, 2018 and the Resolution dated August 20, 2019 of the Court of Appeals-Cebu City in CA-G.R. CEB CR No. 02601 are **AFFIRMED with MODIFICATIONS**.

Petitioner Reynaldo Ombrog y Sauro is **ORDERED** to **PAY** the heirs of Ricarte Vacunawa the following: (1) ₱50,000.00 as civil indemnity; and (2) ₱50,000.00 as moral damages. An interest at the rate of 6% per annum is imposed on all monetary awards from the date of finality of this Resolution until fully paid.

SO ORDERED."

Very truly yours,


LIBRADA C. BUENA
 Division Clerk of Court ^{m 2/17}
117

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The Presiding Judge
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 (Criminal Case No. A-2553)

The Director General
 Bureau of Corrections
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²³ *People v. Jugueta*, 783 Phil. 806, 852 (2016).


 K/A