



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated August 20, 2014 which reads as follows:

“G.R. No. 202630 (Joseph Bitome vs. People of the Philippines). – Petitioner Joseph Bitome (Bitome) challenges in this petition for review on *certiorari*¹ under Rule 45 of the Rules of Court the Decision² dated July 12, 2012 of the Court of Appeals (CA) in CA-G.R. CR. No. 32750, which affirmed the Decision³ dated June 8, 2009 of the Regional Trial Court (RTC) of Dasmariñas, Cavite, Branch 90, in Criminal Case No. 1418-05, finding him guilty of the crime of less serious physical injuries.⁴

Based on the prosecution’s evidence, it was established that on June 6, 2004 at around 2:30 in the afternoon, while private complainant Nolito Dacillo, Jr. (Dacillo) was driving his hens away from the chicken coop, he reached the house of Bitome who was drinking with his friends. Bitome called out Dacillo and approached him. Without warning, Bitome suddenly tried to stab Dacillo on the chest. Fortunately, Dacillo was able to repel the attack. However, Dacillo sustained a wound on his right hand and lost consciousness. After the incident, Bitome immediately fled from the scene. Thereafter, Dacillo was brought to the Philippine General Hospital where he was confined for 10 days. During his confinement, he was not able to continue his job as a construction worker and lost his daily earnings of two hundred pesos (₱200.00).⁵ He was also constrained to pay ₱21,000.00 for his hospital bills, surgery and medication.⁶

¹ Rollo, pp. 3-26.

² Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Ramon R. Garcia and Danton Q. Bueser, concurring; CA rollo, pp. 90-100.

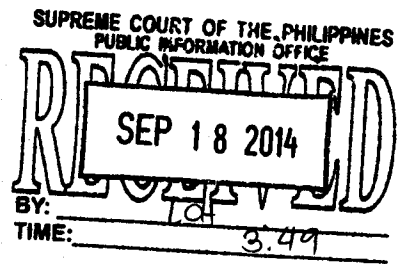
³ Issued by Executive Judge Perla V. Cabrera-Faller; id. at 45-48.

⁴ Art. 265 of The Revised Penal Code which provides that “(A)ny person who inflicts upon another physical injuries not described as serious physical injuries but which shall incapacitate the offended party for labor for ten (10) days or more, or shall require medical attendance for the same period, shall be guilty of less serious physical injuries and shall suffer the penalty of *arresto mayor*.”

⁵ TSN, November 16, 2005, pp. 3-6.

⁶ TSN, March 15, 2006, p. 2.

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Ronald Luces (Luces) corroborated Dacillo's testimony and said that he witnessed the stabbing incident, and that Bitome also tried to attack him with a bladed weapon.⁷

An Information⁸ dated April 25, 2005, was filed by the Prosecutor of Dasmariñas, Cavite, charging Bitome with frustrated homicide. During the arraignment, Bitome pleaded not guilty to the charge. Thereafter, trial ensued.

For his defense, Bitome⁹ testified that at around 1:30 in the afternoon of June 6, 2004, he and his companions were buying some ice and cell phone load at the store of Salvacion Salina when he heard someone shout at them saying, "*Putang ina mo nakaligtas ka kanina, ngayon hindi na.*" When he turned to see who that was, he saw Dacillo. He then answered back, "*Anu problema mo?*"¹⁰ But Dacillo suddenly boxed him on the face, and he fell in front of the store but he immediately stood up. To his surprise, Luces arrived on his bike and tried to stab him but Dacillo was at his back and gripped him with his right hand. He was trying to grab Dacillo's hand and they wrestled until Luces dropped the knife. He immediately ran home and remained inside but Dacillo and Luces were outside throwing stones at his house.

Veritas Musngi, a friend of Bitome, testified that he saw Dacillo with a rock on his hand and Luces chasing after Bitome near his place at Faustina II. He felt the urge of going between them but a neighbour stopped him and told him not to meddle. So he just watched while Bitome ran to his house and he never knew what else happened thereafter.¹¹

On June 8, 2009, the RTC rendered judgment convicting Bitome of the crime of Less Serious Physical Injuries and was sentenced to suffer the penalty of one (1) month and one (1) day of *arresto mayor* as the minimum to six (6) months of *arresto mayor* as the maximum. The RTC also ordered him to pay the complainant the amount of ₱17,308.21 as actual damages.¹²

On appeal, the CA affirmed the RTC decision in its entirety. Bitome then appealed to this Court imputing error to the CA for not considering the inconsistencies and contradictions in the testimonies of the prosecution witnesses.¹³

⁷ TSN, July 11, 2006, pp. 6-8.

⁸ Records, p. 1.

⁹ TSN, June 3, 2008, pp. 4-6.

¹⁰ Id. at 7.

¹¹ TSN, May 6, 2009, p. 5.

¹² CA *rollo*, p. 48.

¹³ *Rollo*, pp. 10-11.

The petition is bereft of merit.

At the outset, it must be stressed that a petition for review on *certiorari* under Rule 45 of the Rules of Court shall raise only questions of law. "A question that invites a review of the factual findings of the lower tribunals or bodies is beyond the scope of this Court's power of review and generally justifies the dismissal of the petition."¹⁴

In this case, the factual findings of the trial court and its evaluation concerning the sufficiency of the prosecution's evidence particularly the credibility of the witnesses clearly involve factual issues which are outside the purview of Rule 45. But even if this Court were to be exceptionally liberal and allow a review of factual issues, still, the instant petition is susceptible to denial.

In attempting to escape liability, Bitome points out that there are irreconcilable inconsistencies in the testimonies of the prosecution witnesses thereby manifesting their lack of credibility. In support of his position, Bitome highlighted the inconsistencies and discrepancies in the prosecution witnesses' testimonies as regards the following: (a) that Dacillo lost consciousness after he was attacked by Bitome; and (b) that Dacillo was cleaning the chicken coop instead of driving hens away prior to the attack.

The Court is not persuaded. Contrary to Bitome's contentions, such inconsistencies do not pierce Dacillo and Luces' credibility. The fact remains that Dacillo has been stabbed with a bladed weapon and he positively identified his stabber as Bitome. "It has been long settled that when the issues raised concern the credibility of a witness, the trial court's findings of fact, its calibration of testimonies, and its assessment of the testimonies' probative weight, including its conclusions based on said findings, are generally given conclusive effect. It is acknowledged that the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth."¹⁵

There may have been inconsistencies in the narration of Dacillo and Luces. These, however, are minor details and simply could be attributed to the frailty of human memory. It cannot be expected that their testimony would be entirely flawless. Inconsistencies as to minor details and collateral matters do not affect the credibility of the witnesses nor the veracity or weight of their testimonies.¹⁶ The alleged inconsistencies in Dacillo's testimony only refer to trivial matters and his testimony is identical in all other aspects and more consistent with the circumstances of his stabbing. Moreover, the testimony of Luces coincides with that of

¹⁴ *Natividad v. Mariano*, G.R. No. 179643, June 3, 2013, 697 SCRA 63, 74.

¹⁵ *People v. Lagman*, G.R. No. 197807, April 16, 2012, 669 SCRA 512, 525.

¹⁶ See *Amarillo, Jr. v. People*, 532 Phil. 193, 202 (2006); *Rabanal v. People*, 518 Phil. 734, 747 (2006); *Magno v. People*, 516 Phil. 72, 81 (2006).

Dacillo relating to the principal occurrence and the positive identification of Bitome. Again, positive declaration is given more weight than the denial of Bitome. Even if there were inconsistencies on certain parts of the testimonies of the prosecution's witnesses, such inconsistencies do not deviate from the established fact that it was Bitome who stabbed Dacillo with a bladed weapon.

Lastly, Bitome's claim of self-defense cannot be appreciated. Case law has it that like *alibi*, self-defense is inherently a weak defense which, as experience has shown, can easily be fabricated.¹⁷

"[S]elf-defense relies first and foremost on proof of unlawful aggression on the part of the victim. If no unlawful aggression is proved, no self-defense may be successfully pleaded."¹⁸ In this case, Bitome has failed to discharge his burden of proving unlawful aggression. His version of the events is uncorroborated, and his testimony has been found to be less credible by the trial court. The evidence on record shows that the instigator of the attack was Bitome as he deliberately and suddenly stabbed Dacillo who was merely attending to his chickens, and was not in any way in the process of attacking Bitome. No clear, credible, and convincing evidence was presented to show that Dacillo was the one who instigated the fight and that Bitome was merely fending off an attack. As the element of unlawful aggression on the part of the victim is absent, Bitome's claim of self-defense must fail.

The lower courts are correct in convicting Bitome to a lesser offense since it was not established that he intended to kill Dacillo when he stabbed him. Bitome's act of stabbing Dacillo once was not followed by any other assault or any act which would ensure his death. When such intent is lacking but wounds were inflicted, the crime is not frustrated homicide but physical injuries only and in this case, less serious physical injuries considering the attending physician's opinion that the wounds sustained by Dacillo required only 10 days of medical attendance.

"There being no aggravating and no mitigating circumstance, the penalty for the crime of less serious physical injuries should be taken from the medium period of *arresto mayor*, which is from two (2) months and one (1) day to four (4) months. The Indeterminate Sentence Law finds no application in the case at bar, since it does not apply to those whose maximum term of imprisonment is less than one year."¹⁹

¹⁷ *People v. Alexa, et al.*, 603 Phil. 571, 580-581 (2009).

¹⁸ *People v. Abesamis*, 558 Phil. 35, 46 (2007).

¹⁹ *Pentecostes, Jr. v. People*, G.R. No. 167766, April 7, 2010, 617 SCRA 504, 518.

WHEREFORE, the instant petition is **DENIED**. The Decision dated July 12, 2012 of the Court of Appeals in CA-G.R. CR. No. 32750 is **AFFIRMED** with the **MODIFICATION** that petitioner Joseph Bitome is sentenced to suffer the straight penalty of three (3) months of *arresto mayor*.

SO ORDERED.” **VILLARAMA, JR., J.**, on leave; **PERALTA, J.**, acting member per S.O. No. 1750 dated August 11. 2014.

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court

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