

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CECILIO DE LEON Y BUENAVENTURA, DEFENDANT-APPELLANT.***G.R. Nos. L-28480-1. September 30, 1971*

Ponente: VILLAMOR, J.

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Tried for murder (Crim. Case No. 85262) and for frustrated murder (Crim. Case No. 85263), Cecilio de Leon was found by the Court of First Instance of Manila guilty as charged, and sentenced in the first case to reclusion perpetua and to indemnify the heirs of the deceased in the sum of P6,000.00, and in the second case to an indeterminate penalty of from 6 years, 1 month and 11 days of prision mayor to 12 years, 5 months and 11 days of reclusion temporal and to indemnify the victim in the sum of P1,000.00; and to pay the costs in both cases. In this appeal, the accused asks for a verdict of acquittal in both cases on a plea of self-defense.

On the evening of November 26, 1966, at about 8:00 o'clock, while Flora Dizon was inside her beauty parlor at 2047 Rizal Avenue, Manila, the accused, Cecilio de Leon, who lived a few meters away on an alley at 2053 Anacleto St., came in. Being only in an undershirt (sando), he was requested by Flora to leave the parlor. Cecilio resented this and started to create trouble by pushing and kicking Flora's manicure table.

At this juncture, Guillermo Dizon, a brother of Flora, arrived. Upon learning from his sister what was going on, Guillermo told Cecilio to go home and not to make trouble. Cecilio refused to leave. This prompted Guillermo to hold him by the shoulder and push him out of the parlor. Before leaving the premises, Cecilio told Flora and Guillermo to wait for him as he would return.

In order to avert further trouble, Flora started to call up the Manila Police Department by telephone. While she was doing so, her other brother, Simeon Dizon, arrived. Simeon was a friend of Cecilio; and upon being informed of the incident, he told his sister that he would talk with Cecilio.

Simeon then left the beauty parlor and proceeded towards Anacleto Street. He was followed closely by Flora, Guillermo and Zenaida, Simeon's wife. Simeon had no sooner left the parlor than he met Cecilio, who had just come from the alley. Simeon asked Cecilio why he was making trouble at the beauty parlor. Cecilio replied that he had no grudge against Simeon, but that he was mad at Flora.

After this point, the true sequence of events is not all too clear. The court below, giving full credence to the testimony of Flora and Zenaida, states in its decision that "all of a sudden and without any warning to Simeon, he took from his pocket the kitchen knife and stabbed Simeon on the abdomen," and that "without warning, the accused also stabbed Guillermo Dizon who approached with intention of giving aid to his brother x x x." On the other hand, the appellant and his witnesses were one in declaring that a boxing bout ensued between Simeon and the appellant, started by Simeon; that Simeon drew his pistol, and the appellant, to avoid being hit, tried to wrest the gun from Simeon; that the gun fired without hitting the appellant who, remembering that he had in his pocket implements for butchering pigs (consisting of 3 butcher knives, a small iron bar and a whetstone), pulled out a knife and stabbed Simeon who fell and again fired, missing for the second time; that Guillermo held the appellant

by his pants; that the appellant made a back swing with his knife, hitting Guillermo; and that the appellant, now released from Guillermo's hold, ran away.

Simeon and Guillermo were taken to a hospital, where Simeon died the same evening due to shock and hemorrhage. Guillermo was released from the hospital after being confined for one month.

We cannot go along with the appellant that self-defense has been proved. While it is true that Simeon was armed with a pistol, it has been established that he drew the same and fired two shots only after he had been stabbed and the appellant had run away. Even assuming, therefore, that Simeon was then boxing the appellant, the use of a knife by the latter may not be considered as a reasonably necessary means for repelling the attack. The same holds true in connection with the attack against Guillermo, who was not even shown to have been armed. The other elements of self-defense, namely, unlawful aggression on the part of the Dizon brothers and lack of sufficient provocation on the appellant's part, have, likewise, not been established.

In convicting the accused for murder and frustrated murder, the trial court considered that the killing of Simeon and the wounding of Guillermo were qualified by evident premeditation and treachery. The Solicitor General, however, is of the opinion that the said qualifying circumstances have not been satisfactorily established, and, consequently, that the appellant should be convicted only for homicide and frustrated homicide. This Court agrees.

Prosecution witness Flora Dizon herself testified that the appellant and the deceased met each other that evening only some 7 or 8 minutes after the appellant had been forced out of the beauty parlor. The stabbings occurred within 30 minutes after the appellant's forcible ejection. In the circumstances there was no sufficient time for meditation and reflection.

On the question of treachery, there is, as already stated, great variance between the testimonies of the prosecution witnesses and those of the defense witnesses, the former declaring that the appellant's attacks came all of a sudden while the deceased and the appellant were talking with each other, and the latter contending that the attacks came during a fistfight. This Court is inclined to believe that the stabbings were preceded by a fistfight between the appellant and the deceased. Why the appellant would suddenly stab the deceased, as declared by Flora, Zenaida and Guillermo, is difficult to believe, not only because it is an admitted fact that the two were good friends, but also because the deceased was not a party to the verbal altercation between his sister and the appellant, or to the appellant's forcible ejection from the beauty parlor. It is, on the other hand, reasonable to believe that the deceased, angered by the appellant's conduct in the parlor as narrated to him by his sister Flora, boxed the appellant after a brief exchange of words; and that the appellant, equally angered, exchanged blows with the deceased, drew out his knife, stabbed the deceased, and, immediately thereafter, likewise stabbed Guillermo, who stood nearby attempting to help his brother. This ratiocination finds support in the medical certificate (Exh. 2) attesting to the presence of multiple abrasions on the appellant's body. Altogether, there is no convincing evidence to support the conclusion that treachery attended the killing of Simeon Dizon and the wounding of Guillermo Dizon.

The appellant should, accordingly, be held liable for homicide and frustrated homicide. Homicide is punishable with reclusion temporal. Applying the Indeterminate Sentence Law, the appellant may, in the homicide case, be sentenced to an indeterminate penalty the minimum of which should not be less than 6 years and 1 day nor more than 12 years of prision mayor, and the maximum of which should not be less than 12 years and 1 day nor more than 20 years of reclusion temporal. The indemnity to the heirs of the deceased should be raised to P12,000.00 (*People vs. Pantoja*, L-18793, October 11, 1968). In the frustrated homicide case, the penalty should be lower by one degree, or 6 years and 1 day to 12 years of prision mayor. Applying the Indeterminate Sentence Law, the

appellant may be sentenced to an indeterminate penalty the minimum of which should not be less than 6 months and 1 day but not more than 6 years of prision correccional, and the maximum of which should not be less than 6 years and 1 day but not more than 12 years of prision mayor.

WHEREFORE, the appealed judgment is hereby modified, and, accordingly, the appellant is declared guilty of homicide in Criminal Case No. 85262, without any aggravating or mitigating circumstance, and sentenced to an indeterminate penalty ranging from eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum, and to indemnify the heirs of the deceased Simeon Dizon in the sum of P12,000.00; the appellant is likewise declared guilty of frustrated homicide in Criminal Case No. 85263, without any modifying circumstance, and sentenced to an indeterminate penalty ranging from two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, and to indemnify Guillermo Dizon in the sum of P1,000.00. Costs against the appellant in both cases.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

Makasiar, J., no part.

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