

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELIMAR NISPEROS Y PADILLA, ACCUSED-APPELLANT.

Ponente: GARCIA-FERNANDEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/1ba1608dccba/>

GARCIA-FERNANDEZ, J.:

This is an appeal from the decision[1] of the Regional Trial Court (RTC) of Tuguegarao City, Cagayan, Branch 03 dated January 19, 2011 finding accused-appellant Elimar Nisperos y Padilla guilty beyond reasonable doubt of homicide defined and penalized under Article 249 of the Revised Penal Code in Criminal Case No. 11678.

Accused-appellant was charged with murder in an information,[2] which reads:

“That on May 5, 2007, in the City of Tuguegarao, Province of Cagayan and within the jurisdiction of this Honorable Court, the accused ELIMAR NISPEROS y PADILLA who was armed with a knife, with intent to kill, qualified with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab the victim Francisco E. Pagulayan, hitting the latter on his chest, thereby inflicting upon him a fatal stab wound that has caused his untimely death.

CONTRARY TO LAW.”

During the arraignment of accused-appellant, he pleaded not guilty to the crime charged.[3]

The accused-appellant filed a petition for bail[4] which was granted by the RTC in a resolution[5] dated November 14, 2008.

Trial ensued thereafter.

The prosecution presented the following witnesses, to wit: a) Chito Padilla; b) P/INSP. Edgar Pattai and PO3 Joseph Curugan; c) SPO1 Dennis Matias; and d) Dr. Eugenio Dayag.

For his defense, accused-appellant presented the following witnesses: a) Imelda Nisperos; b) PO2 Teddy Malana; c) Norma Nisperos; and, d) The accused-appellant himself.[6]

The prosecution's version of the facts is as follows:

Chito Padilla testified that he had a drinking session with a neighbor in his house located in Pallua Sur, Tuguegarao City in the evening of May 5, 2007;[7] that after their drinking session and while cooking his food, he noticed that Francisco Pagulayan and the accused-appellant were chasing each other around the premises of his house;[8] that he did not notice who went out of the premises first; that after turning off the shellane to see what was happening, he saw Pagulayan running towards him, holding his stomach and told him “I was stabbed;”[9] that he helped and brought Pagulayan to the van of his neighbor, retired SPO4 Eddie Dejacto, but he did not accompany Pagulayan.[10]

PO3 Joseph Curugan testified that on May 5, 2007 at about 10:15 in the evening, an individual reported to their office that they saw the accused-appellant on board a tricycle fleeing with other persons;[11] that he, together with Police Inspector Edgar Pattai, PO1 Caluza and PO1 Balanggaya chased the tricycle where accused-appellant was

riding and flagged it down in front of the old Pantranco Terminal, Don Domingo; that they instructed the passengers to alight from the tricycle and asked who among them is Elimar Nisperos;[12] that accused-appellant introduced himself as Elimar Nisperos and surrendered to them without any resistance;[13] and that they brought accused-appellant to the Tuguegarao Police Station for investigation by Police Officer Federico Doca.[14]

The prosecution and defense entered into stipulation of facts, to wit: 1) The testimony of SPO1 Dennis Matias would corroborate the testimony of PO3 Curugan; 2) SPO1 Matias prepared the excerpt of the police blotter under Entry No. 0305-0306; and 3) Dr. Eugenio Dayag, City Health Officer of San Gabriel, Tuguegarao City issued the autopsy report on May 6, 2007 and found that the victim sustained a single injury located in the chest.[15]

The defense, on the other hand, presented its version as follows:

Accused-appellant Elimar Nisperos y Padilla testified that on May 5, 2007 at about 7:00 in the evening, he together with Imelda Nisperos (his wife), Rosy (his sister-in-law), and children were at their house in Pallua Norte, Tuguegarao City, Cagayan when Francisco E. Pagulayan arrived and brought food; that Pagulayan is the live-in partner of his mother;[16] that Rosy got the food from Pagulayan and proceeded to the kitchen; that Pagulayan followed Rosy; that Rosy appeared to be afraid and was trembling upon returning from the kitchen; that accused-appellant inquired as to what happened in the kitchen but Rosy remained silent; that accused-appellant asked Pagulayan, to which the latter answered “Ukinam, may araw ka rin (Son of a bitch, you will have your day)” but he just ignored Pagulayan but advised him instead to go home because he was drunk.[17]

After eating dinner, accused-appellant boarded his tricycle and proceeded to the house in Pallua Sur, Tuguegarao where Pagulayan and his mother were staying to inquire as to what really happened earlier that evening; that accused-appellant's mother was not home[18] but he was surprised when Pagulayan tried to hit him with his fist; that he evaded the attack by stepping back; that when he saw Pagulayan holding a pointed object with his right hand, accused-appellant ran and went inside the property of Chito Padilla;[19] that Pagulayan chased accused-appellant and caught him and tried to thrust the knife at him several times but he was able to evade successfully[20]; that he was able to get hold of Pagulayan's hand, turned it around and thrust the knife at the latter[21]; that accused-appellant ran towards his tricycle, proceeded home[22] and informed his wife that he accidentally stabbed Pagulayan; that he together with Junjun, his wife, sister-in-law and the brother of his sister-in-law went to the Main Police Station to report the incident but was not able to do so because of a sudden brownout; that they instead proceeded to Don Domingo Police Station but they were flagged down by policemen in front of Babaran Funeral Homes located along Balzain; that the policemen asked accused-appellant and his companions who among them is Elimar Nisperos and he answered “ako;” that they pointed their gun at him; and that they handcuffed him and brought him to the main Police Station.[23]

On January 19, 2011, the RTC rendered a decision,[24] the dispositive portion of which reads:

“WHEREFORE, the accused ELIMAR NISPEROS y PADILLA is found GUILTY beyond reasonable doubt, as principal, of the offense of HOMICIDE as defined in Article 249 of the Revised Penal Code and is hereby sentenced:

- 1) To suffer an indeterminate prison sentence ranging from twelve (12) years of prision mayor, as minimum, up to 17 years and 4 months of reclusion temporal, as maximum; and,
- 2) To pay the heirs of Francisco E. Pagulayan:
 - The amount of P50,000.00 as civil indemnity;
 - The amount of P25,000.00 as temperate damages;

- The amount of P50,000.00 as moral damages; and,

- The cost of suit.

The bailbond of the accused is cancelled and his commitment to the Bureau of Jail and Management Penology is hereby ordered.

SO ORDERED.”

Accused-appellant filed this appeal, assigning the following errors to the RTC:

“I

THE HONORABLE COURT A QUO ERRED IN FAILING TO CONSIDER THE PRESENCE OF THE ELEMENTS OF SELF-DEFENSE; AND

II

THE HONORABLE COURT A QUO ERRED IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER IN FAVOR OF THE ACCUSED.”[25]

Accused-appellant contends that the trial court erred in convicting him of homicide despite the fact that all the essential elements of self-defense have been proven by him; and that the mitigating circumstance of voluntary surrender should have been appreciated in his favor.

The appeal is devoid of merit.

Self-defense, when invoked, as a justifying circumstance implies the admission by the accused that he committed the criminal act. Generally, the burden lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt rather than upon the accused that he was in fact innocent. However, if the accused admits killing the victim, but pleads self-defense, the burden of evidence is shifted to him to prove such defense by clear, satisfactory and convincing evidence that excludes any vestige of criminal aggression on his part.[26]

In order to escape criminal liability, it becomes incumbent upon the accused to prove by clear and convincing evidence the concurrence of the following requisites under the second paragraph of Article 11 of the Revised Penal Code, viz: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.

Unlawful aggression is a condition sine qua non for the justifying circumstance of self-defense. Without it, there can be no self-defense, whether complete or incomplete, that can be invoked validly. "There is an unlawful aggression on the part of the victim when he puts in actual or imminent danger the life, limb, or right of the person invoking self-defense. There must be actual physical force or actual use of a weapon." It is present only when the one attacked faces real and immediate threat to one's life. It must be continuous; otherwise, it does not constitute aggression warranting self-defense.[27]

In the case at bar, the accused-appellant failed to discharge his burden of proving that unlawful aggression justifying self-defense was present when he killed Pagulayan.

The aggression initially staged by Pagulayan was no longer present when the accused-appellant stabbed the former. As testified by the accused-appellant himself, he was able to grab Pagulayan's hand with a knife and was able to turn it around. From that point on, the aggression initially staged by Pagulayan ceased to exist and the perceived threat to the accused-appellant's life was no longer attendant. Hence, the accused-appellant was no longer acting in self-defense, when he, despite having overpowered Pagulayan, hit the latter with the knife.

Indeed, had Pagulayan really attacked the accused-appellant, the latter would have sustained some injury from the

aggression. Record shows, however, that no injury of any kind or gravity was found on the person of the accused-appellant.[28]

Moreover, accused-appellant did not only flee from the scene of the crime but also failed to claim self-defense when he was apprehended by the policemen in Don Domingo. Accused-appellant's actuation in not reporting the incident immediately to the authorities cannot take out his case within the ambit of the Supreme Court's jurisprudential doctrine that the flight of an accused discloses a guilty conscience. The justifying circumstance of self-defense may not survive in the face of accused-appellant's flight from the scene of the crime coupled with his failure to promptly inform the authorities about the incident.[29]

For voluntary surrender to be appreciated, the following requisites should be present: 1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary. The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture. Without these elements, and where the clear reasons for the supposed surrender are the inevitability of arrest and the need to ensure his safety, the surrender is not spontaneous and, therefore, cannot be characterized as "voluntary surrender" to serve as a mitigating circumstance.[30]

In the instant case, the police made a chase upon the tricycle of the accused-appellant. Apparently, the latter did not resist the arrest made by the police because he was left with no choice. Thus, the "surrender" was not spontaneous which could be appreciated as a mitigating circumstance of voluntary surrender in his favor.

Under Article 249 of the Revised Penal Code (RPC), the crime of homicide is punishable by reclusion temporal. Applying the Indeterminate Sentence Law, the accused-appellant shall serve an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the RPC and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense. There being no modifying circumstances, the maximum term of the penalty is reclusion temporal in its medium period and the minimum term is within the range of prision mayor. Thus, the accused shall serve a prison term of ten (10) years of prision mayor, as minimum, to fourteen (14) years, (8) eight months, and (1) one day of reclusion temporal, as maximum.[31]

Anent the award of damages, this Court upholds the trial court's award of civil indemnity in the amount of Fifty Thousand Pesos (P50,000.00) and the award of moral damages in the amount of Fifty Thousand Pesos (P50,000.00) to the heirs of the victim, the same being in line with the rulings of the Supreme Court in cases of homicide.[32]

In addition to the P50,000.00 civil indemnity and P50,000.00 moral damages, this Court also upholds the trial court's award of Twenty-five Thousand Pesos (P25,000.00) to the heirs of the victim as temperate damages, in lieu of the actual damages they sustained by reason of the crime. Article 2224 of the Civil Code states that temperate or moderate damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot be proved with certainty.[33]

In addition, and in conformity with current policy, this Court also imposes on all the monetary awards for damages an interest at the legal rate of six percent (6%) from date of finality of this decision until fully paid.[34]

WHEREFORE, the appeal is DENIED. The decision of the Regional Trial Court (RTC) of Tuguegarao City, Cagayan, Branch 03 in Criminal Case No. 11678 dated January 19, 2011 finding accused-appellant Elimar Nisperos y Padilla guilty beyond reasonable doubt of homicide under Article 249 of the Revised Penal Code is

AFFIRMED with MODIFICATION. Accused-appellant is sentenced to suffer the indeterminate penalty of ten (10) years of prision mayor, as minimum, to fourteen (14) years, (8) eight months, and (1) one day of reclusion temporal, as maximum. Accused-appellant is ordered to pay the heirs of Francisco E. Pagulayan the amounts of Fifty Thousand Pesos (P50,000.00) as civil indemnity, Fifty Thousand Pesos (P50,000.00) for moral damages, Twenty-five Thousand Pesos (P25,000.00) for temperate damages, with interest on all these damages at the legal rate of six (6%) percent per annum from date of finality of this decision until fully paid.

SO ORDERED.

Tijam, N. G., Chairperson, and Lopez, M. V., JJ., concur.

- [1] Rollo, pp. 40-46.
- [2] Records, p. 1.
- [3] Records, p. 31.
- [4] Records, pp. 49-50.
- [5] Records, pp. 99-102.
- [6] Records, pp. 53-54.
- [7] TSN dated May 19, 2008, pp. 4-5.
- [8] TSN dated May 19, 2008, pp. 5-6.
- [9] TSN dated May 19, 2008, p. 7.
- [10] TSN dated May 19, 2008, p. 9.
- [11] TSN dated June 3, 2008, pp. 4-5.
- [12] TSN dated June 3, 2008, pp. 5-6.
- [13] TSN dated June 3, 2008, p. 7.
- [14] TSN dated June 3, 2008, pp. 7-8.
- [15] Rollo, p. 41.
- [16] TSN dated October 6, 2010, pp. 3-4.
- [17] TSN dated October 6, 2010, pp. 5-9.
- [18] TSN dated October 6, 2010, pp. 10-11.
- [19] TSN dated October 6, 2010, p. 11-13.
- [20] TSN dated October 6, 2010, p. 13.
- [21] TSN dated October 6, 2010, p. 14-16.
- [22] TSN dated October 6, 2010, p. 17.
- [23] TSN dated October 6, 2010, pp. 18-21.

[24] Rollo, pp. 40-46.

[25] Rollo, p. 115.

[26] People vs. Antero Gamez y Baltazar, G.R. No. 202847, October 23, 2013 citing Simon A. Flores vs. People of the Philippines, G.R. No. 181354, February 27, 2013.

[27] People vs. Antero Gamez y Baltazar, G.R. No. 202847, October 23, 2013 citing People v. Comillo, Jr., G.R. No. 186538, November 25, 2009 and Simon A. Flores vs. People of the Philippines, G.R. No. 181354, February 27, 2013.

[28] See People vs. Alfonso Fontanilla y Obaldo, G.R. No. 177743, January 25, 2012.

[29] People vs. Bingky Campos and Danny “Boy” Acabo, G.R. No. 176061, July 4, 2011.

[30] Rosario T. De Vera vs. Geren A. De Vera, G.R. No. 172832, April 7, 2009.

[31] Virgilio Talampas y Matic vs. People of the Philippines, G.R. No. 180219, November 23, 2011.

[32] Guevarra vs. People, G.R. No. 170462, February 5, 2014.

[33] Guevarra vs. People, G.R. No. 170462, February 5, 2014.

[34] People of the Philippines vs. Bingky Campos and Danny “Boy” Acabo, G.R. No. 176061, July 4, 2011.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.