

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICENTE FERNANDO, JR. ACCUSED-APPELLANT.

Ponente: SADANG, J.

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SADANG, J.:

This is an appeal from the Joint Decision[1] dated May 5, 2011 of the Regional Trial Court (RTC) of Guimba, Nueva Ecija, Branch 33 in Criminal Case Nos. 1997-G and 1998-G, finding accused-appellant Vicente Fernando, Jr. guilty beyond reasonable doubt on separate charges of murder and attempted murder.

The antecedent facts

Accused Vicente Fernando, Jr. (hereafter, accused) was charged with murder and attempted murder in separate Amended Informations that read:

a. Crim. Case No. 1997-G (Murder)

That on or about the 15[th] day of July 2002, in Brgy. Manacsac, in the Municipality of Guimba, Province of Nueva Ecija, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and while armed with an unlicensed short firearm (Caliber .45 pistol), and acting with treachery and evident premeditation, did then and there wilfully (sic), unlawfully and feloniously attack, assault and shoot one DENNIS GERONIMO, inflicting upon the latter gunshot wounds in his body which resulted to his death, to the damage and prejudice of the heirs of said victim.

DONE CONTRARY TO LAW.[2] (Underscoring in the original)

b. Crim. Case No. 1998-G (Attempted Murder)

That on or about the 15[th] day of July 2002, in Brgy. Manacsac, in the Municipality of Guimba, Province of Nueva Ecija, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and while armed with an unlicensed short firearm (Caliber .45) pistol), and acting with treachery and evident premeditation, did then and there wilfully (sic), unlawfully and feloniously attack, assault and shoot one ZENAIDA GERONIMO, inflicting upon the latter gunshot wounds in her body, commencing the commission of Murder directly by such overt acts, but did not perform all the acts of execution which should produce murder by reason of causes or accident other than his own spontaneous desistance, to the damage and prejudice of said Zenaida Geronimo.

DONE CONTRARY TO LAW.[3] (Underscoring in the original)

At the arraignment, accused entered a not guilty plea to both charges.[4] However, at the pre-trial, he admitted having shot Dennis Geronimo and Zenaida Geronimo but claimed self-defense; hence, reverse trial ensued.

The defense presented the accused, Felix Valdez, Rodolfo Sanoy and Alexander Barawid from whose testimonies the following may be gathered:

In the 2002 barangay elections, accused ran against Eduardo Castillo for the position of Punong Barangay of Barangay Manacsac, Guimba, Nueva Ecija. Dennis Geronimo, the deceased victim, was a former counselor and

supporter of Castillo. At around 3 PM of July 7, 2002, Felix Valdez was at a waiting shed when he saw a red pickup truck stop at the house of accused. Dennis was driving the truck and shouted at the accused saying, "Putang ina mo Jojo talo ka na," after which he sped off. In the morning of election day on July 15, 2002, Rodolfo Sanoy saw Dennis near the gate of Manacsac Elementary School wearing a t-shirt with these words printed on the back, "Hindi ka pa kapitan mayabang ka na. Paano kami kung manalo ka. Bang bang bang." At 10 PM on the same day, accused, together with Vic Ramos and "Boy Bangis" Manungon went to the Manacsac Elementary School, Guimba, Nueva Ecija to inquire about the results of the barangay and SK elections. They proceeded to the office of the principal, Mrs. Barawid, and accused found out that he lost in the election. While accused was talking to Mrs. Barawid, Dennis and Zenaida arrived. On seeing accused, Dennis shouted saying, "Ba't nandito yan? Putang Inamo Jojo, umalis ka na dito, 'wag mo nang pakialaman ang resulta ng election, talo ka na," to which accused replied, "Huwag ka naman ganyan." Thereupon, accused and Dennis pushed each other. To avoid any untoward incident, accused turned his back on Dennis but accused's companion shouted: "Pare, babarilin ka." To defend himself, accused grabbed the gun of Manungon and shot Dennis. A stray bullet hit Zenaida on the left thigh. Accused recalled past instances wherein Dennis made insulting comments, such as, "Jojo, huwag ka nang tumakbo di ka mananalo, sayang lang ang pagtakbo mo." He admitted on cross examination that he did not see if Dennis had a gun.

The prosecution offered the testimonies of Zenaida, Dexter Geronimo and Dr. Jun D. Concepcion.

Zenaida testified that she was a public school teacher at the Manacsac Elementary School and a member of the Board of Election Inspectors. At 6 AM on July 15, 2002, she went to the school to supervise the barangay elections to be held on that day. At about 10 PM, while she was tallying the election results in the precinct, she heard the sound of a gunshot and saw accused holding a long firearm. Her son, Dennis, arrived in the precinct to fetch her but as they were about to leave accused entered the room and blocked their way. Accused then shot her twice, hitting her left thigh and buttocks. Accused then shot Dennis' leg. As Dennis fell down, accused shot him twice on the head.

Dexter Geronimo testified on the funeral expenses incurred by the family. He stated that he paid the Abad Cemetery P45,000.00 and the St. John Funeral Homes P37,000.00. He also showed a list of expenses incurred during his brother's wake amounting to P301,678.00.

Dr. Jun D. Concepcion, Medico-Legal Officer of the Province of Nueva Ecija, testified that he conducted a post-mortem examination of the body of Dennis upon the request of Police Superintendent Antonio Feliciano of Guimba, Nueva Ecija Police Station. He testified that Dennis sustained three (3) gunshot wounds and one crushing wound on the tip of his middle finger. The point of entry of the first gunshot wound was the mastoid area or back portion of the victim's head near his ears and the exit wound is at the zygomatic area, the trajectory of the bullet being upward. The point of entry of the second gunshot wound was at the tempora occipital area or the back portion of the head and the exit wound was on the right ear with some brain substance coming out from its original location. The third gunshot wound is on the proximal third of the left leg with point of exit at the distal third point. The last wound sustained by the victim is a crushing wound found on the tip of the middle finger caused by a rough object. Dr. Concepcion confirmed that the first and second gunshot wounds inflicted on the victim were fatal. Based on the trajectory of the first and second gunshot wounds, he opined that the assailant fired the gun while standing at the back of the victim and while the latter was in a lying position.

The prosecution offered documentary evidence,[5] viz.: 1) Death Certificate of Dennis Geronimo; 2) St. John Funeral Home Official Receipt No. 1461, dated July 21, 2002; 3) Itemized list of expenses for food during the wake and 40[th] day of Dennis Geronimo's death amounting to P301,678.00; 4) Receipt in the amount of P45,000.00; and 5) Autopsy Report issued by Dr. Concepcion.

On May 5, 2011, the RTC rendered its Joint Decision[6] convicting accused on both charges. The fallo reads:

WHEREFORE, finding the accused GUILTY beyond reasonable doubt, in both charges, this Court hereby sentences him in:

A. Criminal Case No. 1997-G, to reclusion perpetua and to pay the heirs of Dennis Geronimo the following:

- P50,000.00 – for the death of Dennis Geronimo

- P82,000.00 – in actual damages

- P75,000.00 – in moral damages

B. Criminal Case No. 1998-G, to an indeterminate penalty of four (4) years and two (2) months of prision correccional as minimum to ten (10) years of prision mayor as maximum and to pay Zenaida Geronimo:

- P20,000.00 – by way of indemnity

- P10,000.00 – in moral damages, and

- P5,000.00 – in nominal damages.

SO ORDERED.

Accused's Notice of Appeal[7] was given due course in the Order[8] dated June 7, 2011.

Hence, this appeal raising this assignment of errors:

1. THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF MURDER AND ATTEMPTED MURDER AND IMPOSING THE PENALTY OF RECLUSION PERPETUA (FOR MURDER) AND AN INDETERMINATE SENTENCE OF FOUR (4) YEARS AND TWO (2) MONTHS OF PRISION CORRECCIONAL AS MINIMUM TO TEN (10) YEARS OF PRISION MAYOR AS MAXIMUM (FOR ATTEMPTED MURDER), RESPECTIVELY.

2. THE TRIAL COURT ERRED IN HOLDING THAT THE KILLING OF DENNIS GERONIMO AND THE WOUNDING OF ZENAIDA GERONIMO WAS ATTENDED WITH TREACHERY.

3. THE TRIAL COURT ERRED IN HOLDING THAT THE DEFENSE FAILED TO ESTABLISH UNLAWFUL AGRESSION ON THE PART OF THE VICTIM.

RULING

There is no merit in the appeal.

Accused contends that there was no treachery because the killing and wounding were preceded by an argument between him and the victim. He contends that days before the election, Dennis committed provocative acts against him and even insulted him on the night of July 15, 2002 after the accused learned of his electoral defeat. He insists that he acted in self-defense because there was a real and physical overt act of aggression from Dennis who drew a firearm and pointed it at him.

The Office of the Solicitor General (OSG) counters that that the RTC correctly rejected accused's theory of self-defense. The OSG maintains that neither unlawful aggression nor treachery on the part of Dennis were shown.

For self-defense to be appreciated, the following elements must be shown by clear and convincing evidence: (a) unlawful aggression on the part of the victim; (b) 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.[9] Unlawful aggression is an

indispensable element of self-defense, for if no unlawful aggression attributed to the victim is established, self-defense is unavailing, for there is nothing to repel.[10]

Unlawful aggression on the part of the victim is the primordial element of the justifying circumstance of self-defense. Without unlawful aggression, there can be no justified killing in defense of oneself. The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat. Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful.[11]

Unlawful aggression is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot.[12]

We find that the RTC correctly ruled that there was no unlawful aggression on the part of Dennis. Accused's contention that Dennis pointed a gun at him is belied by his own admission that he did not see if Dennis was armed with a gun before he shot him. He testified that he shot the victim only because he heard Manungon shout, "Pare, babarilin ka." His testimony is quoted hereunder:

Q

That was the time that you grabbed the gun in order to shoot Dennis Geronimo?

A

Yes, Sir, because according to "Bangis he will shoot me.

Q

That is the main reason why you grabbed the gun and fired at Dennis Geronimo because of the phrase, "BABARILIN KA"?

A

Yes, Sir.

Q

How many shots were you able to fire?

A

I cannot remember anymore, Sir.

Q

Now, you are familiar with handguns particularly caliber .45 am I correct?

A

Yes, Sir.

Q

And you know for a fact that a regular caliber .45 usually used by the Armed Forces of the Philippines has a magazine capacity of seven (7) rounds?

A

Yes, Sir.

Q

And when you tucked a gun it is usually under the safe position?

A

Yes, Sir.

Q

And when you grabbed the gun am I correct to say that it is not in a cock position from the waist of Mr. Manungon?

A

Not yet, Sir.

Q

So you cocked it?

A

Yes, Sir.

Q

And after cocking it, that was the time you fired at Dennis Geronimo?

A

Yes, Sir.

Q

And Dennis Geronimo is only three (3) steps away from you?

A

Yes, Sir, three (3) to four (4) steps.

Q

But you did not opted (sic) to verify if indeed Dennis Geronimo was armed during that time because the main reason that inspired you to grab the gun, cocked it and fired at Dennis Geronimo is the only phrase, "BABARILIN KA?"

A

I was not able to see if he has a gun, Sir.[13]

It is basic that once an accused in a prosecution for murder or homicide admits his infliction of the fatal injuries on the deceased, he assumes the burden of proving by clear, satisfactory and convincing evidence the justifying circumstance that would avoid his criminal liability.[14] The first element of unlawful aggression is a condition sine qua non. There can be no self-defense unless there was unlawful aggression from the person injured or killed by the accused; otherwise, there is nothing to prevent or repel.[15] For unlawful aggression to be appreciated, there must be an "actual, sudden and unexpected attack, or imminent danger thereof, not merely a threatening or intimidating attitude." [16] Considering that accused has not shown that there was an actual attack from Dennis or an imminent danger thereof, there can be no unlawful aggression and accused's claim of self-defense must fail. The RTC correctly noted that the authorities did not recover a gun from the scene of the crime. Besides, the version of accused that Dennis pointed a gun at him is not credible. If Dennis were pointing a gun at accused it is difficult to believe that he would have waited for accused to grab the gun of Manungon, cock it, and aim the gun at him without shooting accused first.

The RTC correctly found that the killing was attended by treachery. To constitute treachery, two conditions must concur: 1) the employment of means methods or manner of execution that would ensure the offender's safety from any defense or retaliatory act on the part of the offended party; and 2) the offender's deliberate or conscious choice of the means, method or manner of execution.[17] The prosecution has the burden to prove that at the time of the attack, the victim was not in a position to defend himself, and that the offender consciously and deliberately adopted the particular means, method and forms of attack employed by him.[18]

There is no merit in the contention of accused that there was no treachery because an argument between him and Dennis preceded the shooting. On this point, the RTC correctly gave more credence to the version of the prosecution. The RTC found that Zenaida and Dennis were on their way out of the principal's office when the accused blocked their way and suddenly and unexpectedly fired at them. Then, while Dennis was lying wounded on the ground, unable to defend himself, accused shot him on the head. Accused also ensured that the victims would not be able to escape by blocking the door.[19] The prosecution has shown that accused shot the victim in a manner that would ensure that he would be safe from any retaliatory act of the victim and such manner of execution was consciously chosen by him. By accused's own testimony, it is clear that he bore a grudge against the victim and the manner of his attack shows that it was deliberately adopted.

Accused contends that the RTC failed to appreciate the mitigating circumstance of sufficient provocation on part of Dennis who insulted and taunted him before the shooting.

The contention does not persuade. When the law speaks of provocation either as a mitigating circumstance or as an essential element of self-defense, the reference is to an unjust or improper conduct of the offended party capable of exciting, inciting, or irritating anyone.[20] It is not enough that the provocative act be unreasonable or annoying.[21] To be sufficient, it must be adequate to excite a person to commit the wrong which must accordingly be proportionate in gravity.[22] It should immediately precede the act so much so that there is no interval between the provocation by the offended party and the commission of the crime by the accused.[23] Even assuming that Dennis had uttered the taunting comments against the accused, accused's act of shooting him dead is hardly proportionate in gravity to the conduct of Dennis. We are not convinced that Dennis' remarks qualify as sufficient provocation to mitigate the crime of murder.

The penalty prescribed by law for murder is reclusion perpetua to death.[24] However, Republic Act No. 9346, which was approved on June 14, 2006, repealed the death penalty, hence, the only penalty that may be imposed for murder is reclusion perpetua. Although the crime was committed in July 2002, or before the effectivity of R.A. 9346, the RTC correctly imposed the penalty of reclusion perpetua in Criminal Case No. 1997-G considering that it is favorable to the accused.[25]

As to the damages awarded, when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[26] The RTC awarded Dennis' heirs P50,000.00 as civil indemnity, P82,000.00 as actual damages, and P75,000.00 as moral damages. In line with recent jurisprudence[27] the award of civil indemnity in Criminal Case No. 1997-G must be increased from P50,000.00 to P75,000.00, however, the award of moral damages must be reduced to P50,000.00. The award of P82,000.00 as actual damages is proper as it is supported by receipts.

As to the crime of attempted murder, the penalty is two degrees lower than that prescribed for the consummated felony pursuant to Article 51 of the RPC, which is prision mayor. Applying the Indeterminate Sentence Law, the minimum of the penalty to be imposed shall be within the range of the next lower penalty which is prision correccional. There being no mitigating or aggravating circumstance, the maximum of the penalty shall be within the medium period range of prision mayor.[28] Thus, the penalty imposed by the RTC conforms with the law.

However, the award of civil indemnity to Zenaida must be increased from P20,000.00 to P25,000.00.[29] Further, in line with recent jurisprudence, the amount of damages awarded in both cases shall be subject to legal interest of 6% per annum from the finality of this judgment until fully paid.[30]

WHEREFORE, premises considered, the appeal is DENIED. The Joint Decision dated May 5, 2011 of the Regional Trial Court of Guimba, Nueva Ecija, Branch 33 in Crim. Case Nos. 1997-G and 1998-G, is AFFIRMED with MODIFICATIONS as follows: 1) In Crim. Case No. 1997-G the civil indemnity is increased to P75,000.00 and the moral damages reduced to P50,000.00; and 2) In Crim. Case No. 1998-G, the civil indemnity is increased to P25,000.00. Further, the amounts of damages awarded in both cases shall be subject to 6% per annum from finality of the judgment until fully paid.

SO ORDERED.

Librea-Leagogo, (Chairperson), and Diamante, JJ., concur.

[1] Rollo., pp. 29-35.

[2] Id., p. 25.

- [3] Id., p. 27.
- [4] Records (Crim. Case No. 1997-6) p. 172; Records (Crim. Case No. 1998-6) p. 26.
- [5] Formal Offer, Record, pp. 229-301.
- [6] Penned by Judge Ismael P. Casabar.
- [7] Records., p. 329.
- [8] Id., p. 331.
- [9] Article 11 (1), Revised Penal Code.
- [10] Calim v. Court of Appeals, 351 SCRA 559 (2001).
- [11] People v. Nugas, 661 SCRA 159 (2011).
- [12] Id.
- [13] TSN, July 29, 2010, pp. 16-17.
- [14] Cabuslay v. People, 471 SCRA 241 (2005).
- [15] People v. Campos, G.R. No. 176061, July 4, 2011.
- [16] People v. Rubiso, 399 SCRA 697 (2003).
- [17] People v. Rendaje, 344 SCRA 738 (2000).
- [18] People v. Castellano, G.R. No.139412, April 2, 2003.
- [19] TSN, August 19, 2010, pp. 5-7.
- [20] Navarro v. Court of Appeals, G.R. No. 121087, August 26, 1999, 313 SCRA 153.
- [21] Cano v. People, G.R. No. 155258, October 7, 2003, 413 SCRA 92, 105.
- [22] Navarro v. Court of Appeals, 313 SCRA 153 (1999) citing People v. Nabora, 73 Phil. 43 (1941).
- [23] Id.
- [24] Revised Penal Code, Article 248
- [25] People v. Quiachon, 500 SCRA 659 (2006).
- [26] People v. Molina, G.R. No. 184173, March 13, 2009, 581 SCRA 519.
- [27] People v. Asis, 624 SCRA 509.
- [28] People v. Gutierrez, G.R. No. 188602, February 4, 2010.
- [29] People v. Adallom, G.R. No. 182522, March 7, 2012.
- [30] Supra at note 24.

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