

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PIO CASTILLO @ JUNE, ACCUSED-APPELLANT.

Ponente: DIMAAMPAO, J.

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DIMAAMPAO, J.:

Pio Castillo (“MANG JUNIOR”) appeals from the Decision[1] dated 21 July 1999 of the Regional Trial Court of Manila, Branch 44 in Consolidated[2] Criminal Cases Nos. 95-43346 and 97-156144 for “Homicide” and “Violation of P.D. No. 1866[3]”, respectively. The fallo of the said Decision reads:

“WHEREFORE, in view of the foregoing consideration, this Court finds the accused guilty beyond reasonable doubt of the crime of Homicide, he is hereby sentenced to an indeterminate penalty of imprisonment of 8 years of prison mayor as minimum to 14 years and 8 months of reclusion temporal as maximum. Accused is also ordered to indemnify the heirs of Romeo Enriquez the amount of P50,000 and to pay actual damages of P13,500.

In Criminal Case No. 97-156144 for Illegal Possession of Firearm, for insufficiency of evidence, accused is hereby ACQUITTED from the offense charged.

SO ORDERED.”[4]

The Information[5] charging appellant with Homicide reads as follows:

“That on or about December 25, 1994, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously with intent to kill, attack, assault and use personal violence upon one ROMEO ENRIQUEZ by then and there shooting the latter several times with a gun, hitting him on the left side of the face, left mid-side section of the body and on the left arm, thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his death thereafter.

Contrary to law.”

The case was docketed as Criminal Case No. 95-143346 and was raffled to Branch 44 of the Manila Regional Trial Court.

The second Information[6] charged appellant with Violation of Presidential Decree No. 1866, viz:

“That on or about December 25, 1994, in the City of Manila, Philippines, the said accused not having been authorized by law, did then and there wilfully, unlawfully and knowingly have in his possession and under his custody and control a firearm (revolver), without first having secured the necessary license/permit therefor from the proper authorities.

Contrary to law.”

This case was docketed as Criminal Case No. 97-156144.

On 17 June 1997, the court a quo issued an Order[7] allowing the consolidation of Criminal Case No. 97-156144 (Illegal Possession of Firearms) with Criminal Case No. 95-143346 (Homicide). These cases were tried jointly.

MANG JUNIOR pleaded not guilty to both charges.[8]

The prosecution presented nine (9) witnesses, namely: the victim's mother, Expectacion Enriquez, sister Vilma Soriano, brothers Danilo and Ariel Enriquez, neighbors Benita Blanca and Manuel Ventura, investigating officers SPO2 Conrado Bustillos and SPO4 Federico Bondoc and Dr. Florante Baltazar, medico-legal officer of the PNP Crime Laboratory-National Capital Region (NCR).

The prosecution established that on or about midnight of 24 December 1994, as MANG JUNIOR's granddaughter, Gwendolyn Manlapas, and her boyfriend were walking near the church along ROMEO ENRIQUEZ's ("ROMEO") house in Interior 9, Juan Luna, Gagalangin, Tondo, Gwendolyn's boyfriend suddenly uttered, "Meron ba kayong hikaw sa suso gaya nito?", showing his breast to the general public. Witness Manuel Ventura, upon hearing those words and knowing that there was a mass being held nearby, berated him. This angered Gwendolyn and she started cursing Manuel. Witness Danilo Enriquez, who was then at home, heard the commotion and tried to pacify Gwendolyn. Gwendolyn turned her ire upon Danilo, saying "Huwag kang makialam dito. Kahit barangay tanod ka, wala kang pakialam!"[9] Gwendolyn left, but returned and resumed shouting at Manuel. Danilo tried to stop her a second time. Gwendolyn left.

A few minutes later, Edmund Castillo arrived, followed by Francisco (Bobong) and Daniel (Icong) Castillo.[10] Edmund took a swing at the unsuspecting Danilo. Bobong and Icong joined in the fray. Seeing his brother being mauled by the three Castillos, witness Ariel Enriquez came to help Danilo. A fracas ensued.[11] Danilo succeeded in overpowering Bobong and ran towards the police station.[12] Left behind, Ariel hid. His brother, ROMEO, suddenly appeared, followed closely by MANG JUNIOR who fired three shots, and hit him at the left cheek and left forearm. Ariel then threw a rock at MANG JUNIOR. Witness Manuel, who was then hiding, warned Ariel that accused MANG JUNIOR was armed. Frightened, they took cover in an alley and returned only when MANG JUNIOR had left. They brought the bloodied ROMEO to the Tondo General Hospital, where he was pronounced dead on arrival.[13]

Dr. Florante F. Baltazar, Chief Inspector and Medico-Legal Officer of the PNP Crime Laboratory, conducted the autopsy on the body of ROMEO and made the following findings:

"FINDINGS :

Fairly developed, fairly nourished male cadaver in rigor mortis with postmortem lividity at the dependent portions of the body. Conjunctiva, lips and nailbeds were pale.

EXTERNAL INJURIES: Head, Trunk and Upper extremity;

(1) Gunshot wound, left mandibular region, as the point of entry, 140 cms. from heel, 10 cms. from the anterior midline, measuring 0.5x0.4cm. with contusion collar, measuring 0.9x0.8cm., directed slightly upwards, backwards, left to right, fracturing the left mandible and recovery of metallic fragment at the posterior right neck, (fracturing 2nd cervical vertebra).

(2) Gunshot wound, left cubital fossa, as the point of entry, measuring 0.3x0.3cm., with contusion collar measuring 1x.9 cm. tattooing

CONCLUSION :

Cause of death is gunshot wounds, left mandibular and anterior left lumbar region"[14]

Witness Expectacion Enriquez, the victim's mother, testified that when the shooting incident happened, she was at the police station seeking police assistance. She returned to their house in time to see the lifeless ROMEO being carried to a sidecar. She cried and embraced her son. She was with him when he was brought to the Tondo General Hospital, and later on to Sol Funeraria at Juan Luna St., Tondo, Manila. She alleged that she paid

P13,500 for the casket[15], and incurred a number of expenses for the wake and funeral services.[16] She also testified the death of her son caused her great suffering and sleepless nights.[17] After ROMEO's burial, she went to Camp Crame to verify whether or not MANG JUNIOR was licensed to carry a firearm.[18] Subsequently, she was issued a certificate stating that the latter was neither a licensed nor a registered firearm carrier.[19]

The defense, consisting mainly of the testimonies of MANG JUNIOR's nephew, Francisco Castillo; his neighbor, Manuel Carlos; and MANG JUNIOR himself, presented different versions of the shooting incident. Francisco alleged that on that fateful night, he stood at the corner of Victoria and Manotoc streets and saw Edmund Castillo running past him towards an eskinita. He followed Edmund and saw Danilo Enriquez, Ariel Enriquez and Emerson Soriano[20] engaging in a fight. Francisco tried to pacify them, but was instead mauled by Danilo, Ariel and ROMEO,[21] breaking his rib, cutting his eye, and sustaining bruises on his face. Danilo tried to drop an adobe block on Francisco, causing him to lose consciousness. He regained consciousness at the Martinez Hospital.[22]

At about the same time, MANG JUNIOR was busy laying out their media noche when somebody knocked on the door and uttered, "Mang Junior, Mang Junior, ang anak niyo pinapatay!" He immediately took a lead pipe and proceeded to the place of the commotion, which was about 15 steps away. Witness Manuel Carlos saw MANG JUNIOR running to the scene holding a pipe.[23] Upon seeing an unknown assailant pointing a gun at his son, MANG JUNIOR reacted immediately by hitting the former with the lead pipe. Both the pipe and the gun fell to the ground. MANG JUNIOR picked up the gun and as he was about to pull the trigger, his son's assailant grappled with him and accidentally pulled the trigger. The assailant fell.[24]

Realizing that he had killed someone ("Tila nakapatay yata ako."), MANG JUNIOR fled the scene and first went to his house, then to his brother's house, then to another brother, Martin Castillo. After that, he went to his sister, Conchita and then to another sister, Florencia Fernandez, who lived just an alley away. After three days, he left Florencia's house and went to the house of another sister, Erlinda, in Malabon where he stayed there for a month. He learned the identity of his victim only three months after.[25]

Invoking defense of relative, MANG JUNIOR stated that his mind went blank upon hearing that his son was in danger and that it was but natural for a father to come to the aid of his son.[26]

On 21 July 1999, the court a quo rendered judgment finding MANG JUNIOR guilty beyond reasonable doubt of the crime of Homicide, and meted upon him the indeterminate penalty of imprisonment of 8 years of prison mayor as minimum to 14 years and 8 months of reclusion temporal as maximum, and to indemnify the victim's heirs in the amount of P50,000 and actual damages in the amount of P13,500. The trial court discursively ruled:

"Accused admitted the killing of Romeo Enriquez. While he did not specifically invoke self-defense or defense of a relative, such could be inferred from his very testimony. xxx

It is a cardinal principle in criminal law that the prosecution has the burden of proving the guilt of the accused. The rule is reversed, where the accused admits the commission of the crime but only in defense of oneself. In which case, the burden is shifted to the accused who must prove clearly and convincingly the essential elements of self-defense. They are: (1) unlawful aggression on the part of the victim; (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.

By unlawful aggression, it presupposes an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude.

The incident rooted from an argument between Guwendolyn (granddaughter of accused) and her boyfriend while they were walking along Interior of Juan Luna St., Gagalangin, Tondo, Manila. Manuel Ventura tried to

pacify them because of the on-going mass nearby. A heated argument ensued between Ventura on one hand and Guwendolyn and her boyfriend on the other hand. Their arguments caught the attention of Danilo Enriquez, a Barangay Tanod, who tried to stop them and asked Guwendolyn to go home. Guwendolyn resented the interference of Danilo and went home. Moments later, Edmund, Francisco and Icong Castillo arrived and a rumble occurred between the Castillos and the Enriquez brothers. Francisco was pinned down by Romeo who pointed a gun at the former. It was at this instance that accused came with a lead pipe, hit Romeo, causing the gun to fall. Accused picked the gun. Romeo grappled with the accused for the possession of the gun when it fired hitting Romeo who died as a result thereof.

From the foregoing facts, the prosecution has shown that the incident was initiated by the Castillos'. The defense, therefore, has failed to establish that the victim Romeo Enriquez was the protagonist in this case. Unlawful aggression is a condition sine qua non in a qualifying circumstance of self-defense. Thus, in *People vs. Osigan*, 223 SCRA 743 and *People vs. Morato*, 224 SCRA 361, the Supreme Court ruled -- As unlawful aggression has not been established, it is not necessary to prove the other elements of self-defense. If there is no unlawful aggression, there is nothing to prevent or to repel and the second requisite of self-defense will have no basis. It is essential that the first element of self-defense, unlawful aggression initiated by the victim must be clearly shown for in its absence, self defense cannot exist, *People vs. Curaraton*, 224 SCRA 372.”[27]

The court a quo, however, acquitted MANG JUNIOR from the charge of illegal possession of firearm for insufficiency of evidence.

Undaunted, MANG JUNIOR (now appellant) interposed the present appeal assigning the following errors[28]:

I.

THE TRIAL COURT ERRED IN FINDING THAT THE DECEASED ROMEO ENRIQUEZ WAS NOT A PROTAGONIST IN THE FIGHT.

II.

THE TRIAL COURT ERRED IN FINDING THAT THERE WAS NO UNLAWFUL AGGRESSION ON THE PART OF THE DECEASED ROMEO ENRIQUEZ.

III.

THE LOWER COURT ERRED IN NOT FINDING THAT THE ACCUSED MERELY ACTED IN DEFENSE OF A RELATIVE.

IV.

THE TRIAL COURT ERRED IN NOT FINDING THAT THE ACCUSED WAS INNOCENT OF THE OFFENSE CHARGED AGAINST THEM.

Appellant assails the findings of the court a quo in failing to consider ROMEO as a protagonist despite ROMEO's participation in the melee. Appellant likewise argues that ROMEO's act of pointing a gun at another constituted unlawful aggression, and his (appellant's) act of coming to the aid of the endangered person whom he thought to be his son is justified. Appellant further maintains that the firing of the gun was not intentional but was the result of the grappling for possession of the gun. There being no criminal intent, no crime had been committed.

The Appeal lacks merit. We affirm the conviction.

Appellant faults the court a quo for misappreciating the facts in appellee's favor. However, a careful review and evaluation of the testimonies of the witnesses for the prosecution as well as for the defense yields no cogent

reason for Us to alter the findings of fact of the court a quo. Factual findings of the trial court are entitled to respect and are not to be disturbed on appeal unless some facts or circumstances of weight and substance, having been overlooked or mis-interpreted, might materially affect the disposition of the case.[29]

We agree with the court a quo that victim ROMEO was not the protagonist in the subject quarrel. The incident was traced from a heated argument between Gwendolyn (MANG JUNIOR's granddaughter), her boyfriend, and Manuel Ventura. ROMEO was thus not a party to their quarrel. The defense witnesses failed to prove otherwise, not having witnessed the incident.

As to the remaining issues, it bears noting that appellant's tendency to invoke a mélange of defenses renders his testimony dubious. While he admitted the commission of the crime in order to save the life of his relative, and his own, he also maintained that ROMEO accidentally pulled the trigger on himself. This shows ambivalence. Accident presupposes a lack of intent, while self-defense and defense of relative presume voluntariness, induced only by necessity.[30]

Appellant asserts that he acted in self-defense or in defense of Francisco Castillo. One who invokes self-defense admits responsibility for the killing. Accordingly, the burden of proof shifts to the accused who must then prove the justifying circumstance. In order to avoid criminal liability, he must show by clear and convincing evidence that he indeed acted in self-defense, or in defense of his relative. All the following elements of self-defense must be established: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person claiming self-defense.[31]

Unlawful aggression is the first and primordial element of self-defense. Aggression to be unlawful, must be actual and imminent, such that there is a real threat of bodily harm to the person resorting to self-defense or to others whom that person is seeking to defend.[32] Appellant maintains that ROMEO was an unlawful aggressor. However, such claim is belied by his own testimony:

“ATTY. ATIENZA:

Q What happened after that?

WITNESS:

A After I heard that “Mang Junior, Mang Junior, papatayin ang anak ninyo.” and I immediately (sic) rushed to the scene of the incident, I saw someone pointing a gun at my son and so without any second thought I hit that hand holding the gun with a lead pipe that I took from my house.

ATTY. ATIENZA:

Q What happened when you hit that hand holding the gun?

WITNESS:

A There was a loud clang as the lead pipe hit the gun and because of that strong impact the lead pipe fell on the ground.

ATTY. ATIENZA:

Q What happened after that?

WITNESS:

A Because the lead pipe was a bit far from me and it was the gun that I saw first, I immediately picked it up.

ATTY. ATIENZA:

Q: And what happened when you picked up the gun?

WITNESS:

A: As I was about to pull the trigger, he clasped my wrist and then we held on to each other.”[33]

Assuming arguendo that ROMEO pointed a gun at Francisco who was lying helpless on the ground, the threat ceased when appellant hit ROMEO with the lead pipe, causing the gun to fall to the ground and thereby leaving ROMEO unarmed. At that point, the unlawful aggression against him effectively ceased. When ROMEO and appellant again grappled for possession of the weapon, appellant now became the armed protagonist, and ROMEO’s act of trying to wrest the weapon cannot be considered as unlawful aggression. At that moment, neither appellant nor his son no longer faced any imminent or immediate danger to his life and limb from ROMEO. Upon his own admission, appellant picked up the gun and was about to pull the trigger when ROMEO clasped his wrist. From the foregoing, it is evidently clear that ROMEO could no longer be considered as unlawful aggressor. Appellant had nothing to repel. Therefore, appellant’s theory that he was merely defending his son or himself when he killed ROMEO is unavailing. A fortiori, there would be no basis for the second requisite of self-defense.

The first requisite for self-defense or defense of a relative is indispensable. Unless it is proven that there has been unlawful aggression on the part of the person injured or killed by the assailant, there can be no self-defense. If there is no unlawful aggression, there is nothing to prevent or repel. “In addition, for unlawful aggression to be appreciated, there must be an actual, sudden unexpected attack or imminent danger thereof, and not merely a threatening or intimidating attitude and the accused must present proof of positively strong act of real aggression.” And for incomplete self-defense to be invoked there must necessarily be unlawful aggression on the part of the victim. x x x The moment the victim was disarmed, the imminent danger to the life of the accused ceased. In the case at bench, when appellant fired shots at ROMEO, he became the unlawful aggressor.[34]

Furthermore, if there is truth to appellant’s claim, his natural course of action would be to assist the victim, or, at the very least, report the incident to the authorities. Certainly, the justifying circumstance of self-defense or the exempting circumstance of accident cannot be appreciated considering appellant’s flight from the crime scene and his failure to inform the authorities of the incident.[35] His act of fleeing from the scene of the crime instead of reporting the incident to the police authorities is contrary to his proclaimed innocence.[36]

Finally, his failure to surrender the gun to the authorities is inconsistent with a clean conscience and instead, indicates his culpability of the crime charged.[37]

The court a quo’s award of civil indemnity in the amount of Fifty Thousand Pesos (P50,000) is consistent with prevailing jurisprudence. Where death results from a crime, the heirs of the victim are entitled to be indemnified for the latter’s death without need of further proof.[38]

However, the court a quo erred in not awarding moral damages. The current case law is that in homicide or murder cases, moral damages which is now fixed in the amount of P50,000 should be automatically awarded to the family of the victim. Mental anguish, serious anxiety, moral shock and wounded feelings are too obvious to be overemphasized for it is borne by human nature and experience that a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim’s family.[39]

The penalty prescribed by law[40] for homicide is reclusion temporal. There being no aggravating nor mitigating circumstances, the penalty imposable is reclusion temporal in its medium period; and applying the Indeterminate Sentence Law, the penalty that should be imposed upon accused-appellant is an indeterminate sentence within the range of prision mayor, as minimum, and reclusion temporal medium, as maximum.[41] Considering that the minimum and maximum of the penalty imposed are within the range of prision mayor in the medium period and reclusion temporal in the medium period, respectively, We uphold the court a quo's imposed penalty.

WHEREFORE, the judgment of conviction is hereby **AFFIRMED** with **MODIFICATION** in that accused-appellant PIO CASTILLO is ordered to pay P50,000 by way of moral damages to the heirs of deceased ROMEO ENRIQUEZ.

SO ORDERED.

Buzon, and Maambong, JJ., concur.

[1] Original Record, pp. 237-256; Rollo, pp. 67-86; Penned by Hon. Lolita Gal-Lang, Presiding Judge, RTC, Manila, Branch 44.

[2] Original Record, p. 141; Order dated 17 June 1997.

[3] Entitled "CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION, OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES"

[4] Original Record, pp. 255-256; Rollo, pp. 85-86.

[5] Original Record, p. 1

[6] Record, p. 237; Quoted in the assailed Decision dated 21 July 1999.

[7] Original Record, p. 141.

[8] Original Record, pp. 27 & 28 and 219; Minutes & Order dated 4 July 1995 and Memorandum for the Accused.

[9] TSN, 21 November 1995, pp. 10-12.

[10] TSN, 17 October 1995, pp. 8-11.

[11] TSN, 21 November 1995, pp. 12-14; TSN, 23 April 1996, pp. 12-22; TSN, 25 September 1996, pp. 19-22.

[12] TSN, 23 April 1996, pp. 22-24; TSN, 25 September 1996, p. 23.

[13] TSN, 21 November 1995, pp. 18-20; TSN, 23 April 1996, pp. 25-42.

[14] Original Record, p. 81; Medico-Legal Report No. M-2081-94.

[15] Original Record, p. 128.

[16] Id., p. 129.

[17] TSN, 10 February 1997, pp. 3-21.

[18] TSN, 13 October 1997, p. 51.

- [19] Original Record, p. 131.
- [20] TSN, 16 June 1998, p. 8.
- [21] TSN, 16 June 1998, p. 9.
- [22] Id., p. 11.
- [23] TSN, 13 July 1998, pp. 9-16.
- [24] TSN, 24 August 1998, pp. 10-15.
- [25] Id., pp. 16-27.
- [26] TSN, 24 August 1998, p. 36.
- [27] Original Record, pp. 252-253..
- [28] Rollo, pp. 55-56.
- [29] Sullon v. People, 461 SCRA 248, 253 (2005).
- [30] People v. Abrazaldo, 397 SCRA 137, 146 (2003).
- [31] Cabuslay v. People, 471 SCRA 241, 256 (2005), citing People v. Cawaling, 355 Phil. 1, 37 (1998).
- [32] Id., p. 257.
- [33] TSN, 24 August 1998, pp. 13-14; Emphasis supplied.
- [34] See People v. Maalat, 275 SCRA 206, 213 (1997).
- [35] People v. Abrazaldo, 397 SCRA 137, 146 (2003).
- [36] See Sullon v. People, 461 SCRA 248, 255 (2005).
- [37] See People vs. Abrazaldo, 397 SCRA 137, 146 (2003).
- [38] People v. Mosquera, 362 SCRA 441, 455 (2001).
- [39] People v. Samson, 377 SCRA 25, 37-38 (2002).
- [40] Article 249, Revised Penal Code.
- [41] People v. Nitcha, 240 SCRA 283, 297 (1995).

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