

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. LITO PEREZ AND RUSTUM DE LA TORRE, DEFENDANTS AND APPELLANTS.

G.R. NO. L-28583. April 24, 1974

Ponente: FERNANDO, J.

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FERNANDO, J.:

In this appeal by the accused Lito Perez and Rustum de la Torre, found guilty beyond reasonable doubt of the crime of murder, and each sentenced to suffer the penalty of reclusion perpetua, there are circumstances indicative of bitterness engendered by politics resulting in a grim tragedy, the killing of the deceased Edgar Dilig. Appellants did admit firing the fatal shots, thirteen in number, death being instantaneous. They would seek exculpation, however, on the ground of self-defense. The lower court was unimpressed, for the evidence did not disclose any unlawful aggression on the part of the unfortunate victim. A careful study of the record fails to dent in any way the correctness of such a conclusion. We have to affirm the judgment of conviction then, with appellant Rustum de la Torre being entitled to a reduction of the penalty as he has in his favor the mitigating circumstance of voluntary surrender, which the lower court did not appreciate. In line with our past decisions, likewise, the indemnity must be increased to the amount of P12,000.00.

These are the facts on which the conviction was based. Edgar Dilig, the victim of the fatal shooting, was an Internal Revenue collection agent assigned to the Municipality of Pontevedra, Negros Occidental.[1] In the past elections, he was identified with the political group of one Marino Rubin, but not in 1965, when he supported another faction.[2] One Dido Doronila, living in his house in Pontevedra, was shot sometime after the 1965 election by a henchman of Rubin.[3] Doronila was confined in the hospital, his successful recovery being in large measure due to Dilig who donated his own blood for the needed transfusions.[4] Sometime in March 1966, after he had regained his health, Doronila stabbed to death one Vicente Nava, a brother-in-law of Rubin.[5] Hence, what started as a political falling out assumed the aspect of a deep-seated grudge.

That was the prelude to the tragedy of July 10, 1966. In the afternoon of that day, Dilig, accompanied by his wife, drove his car to the gasoline station of Manuel Magallanes along Rizal Street in Pontevedra to refuel, preparatory to their plan to enroll their children in school at Bacolod City.[6] He even helped the station attendant in filling the tank of his car. His wife went to the grocery store, only about seven meters away. It was also owned Magallanes. While inside, she saw Marino Rubin drinking beer with his bodyguards, the accused Rustum de la Torre and Lito Perez, the latter being also Rubin's driver.[7] Immediately, she left the store, as she had heard the rumor that Rubin would shoot her husband if the latter was seen by the former[8]. She was however unable to warn him.[9] He went inside the store obviously to pay for the gasoline he bought.[10] Immediately after Edgar Dilig entered the main door of the store, she heard a voice in Visayan, "prepared kamo," meaning "prepare" followed by repeated gunshots. She was under the impression that the voice came from Marino Rubin.[11] She then walked towards the store and peeped through the window.[12] She saw appellant Perez by the side of a cooler firing his gun at Edgar Dilig.[13] She also saw Rustum de la Torre standing near the cash counter, also

firing simultaneously with his gun.[14] Edgar Dilig fell down the cement floor on his right side, but even though he was already down, both appellants continued firing at him.[15] Then, they ran outside the store with their guns and departed, riding in a red pickup truck.[16] Not long afterwards, Marino Rubin, along with Faustino Macoy (Remachi) and Jayme Balaba, boarded the jeepney of Magallanes and left the place.[17] Mrs. Dilig requested one Salvador Martinez to take the body of her husband, but he advised her not to touch the body before the arrival of the police authorities.[18] She then proceeded to the municipal building of Pontevedra and reported the incident. The Chief of Police, with two patrolmen and one Doctor Tambanillo, conducted the investigation. The medical examination revealed thirteen gunshot entrances and nine wounds of exit. Likewise, four slugs were found inside the body. The cause of death was shock and hemorrhage due to such wounds. Before the body was removed, a photographer was able to take pictures of the prostrate victim.

It is rather apparent from the events as they did transpire that appellants cannot escape the responsibility for the killing. They did seek both in the lower court and now on appeal to impart justification for what was done by them on the allegation that they acted in self-defense, there being testimony from Rustum de la Torre that on that fateful afternoon when the victim entered the store, from a distance of three meters, he "saw his right hand holding the butt of his revolver." [19] Then and there, this appellant, later joined by the other, started firing away. To lend such a version a color of plausibility, he did add that previously, threats had been hurled by the deceased against both of them for being cohorts of Rubin. There is lacking here those elements of solidity, clarity and persuasiveness for success to attend the plea of self-defense.[20] What is even more damaging to the efforts of appellants at exculpation is that nothing testified to by them showed that there was unlawful aggression on the part of the deceased, the primordial element in self-defense. Hence, to repeat, conviction was unavoidable.

1. Nothing is better settled in our jurisprudence than that for the plea of self-defense to prosper, the requirements of the Revised Penal Code as to the elements of unlawful aggression, reasonable necessity of the means employed to prevent or repel it and lack of sufficient provocation on the part of the person defending himself must be shown to exist by the accused by proof impressed with a high quality of persuasiveness.[21] Only two months ago, in *People vs. Manlapaz*, we had occasion to state: "It is now, as it has been these past seven decades, the established doctrine that the burden of proof to show the presence of such requisites is on the accused. It can be met only by evidence sufficient, satisfactory and convincing in character. In the language of justice Pablo: 'La defensa propia es una alegacion afirmativa que debe ser probada de una manera acabada; en caso contrario, la condena del acusado es forzosa porque admite ser autor de la privacion de la vida del occiso.'" [22]

2. What is more, as stressed in the able brief of the then Solicitor General, now Associate Justice, Antonio P. Barredo, assisted by the then Solicitor, now Assistant Solicitor General, Eulogio Raquel-Santos, appellants could not in any way justify their plea of self-defense in the absence of a showing that there was unlawful aggression on the part of the deceased. So it has been from *United States vs. Carrero*, [23] a 1908 decision, to *People vs. Encomienda*. [24] In *United States vs. Carrero*, [25] this Court speaking through Justice Torres, there is this categorical declaration: "Unlawful aggression is the main and most essential element to support the theory of self-defense and the complete or incomplete exemption from criminal liability; without such primal requisite it is not possible to maintain that a person acted in self-defense within the terms under which unlawful aggression is subordinate to the other two conditions named in Article 8, No. 4, of the Penal Code. When an act of aggression is in response to an insult, affront, or threat, it can not be considered as a defense but as the punishment which the injured party inflicts on the author of the provocation, and in such a case the courts can at most consider it as a mitigating circumstance, but never as a reason for exemption, except in violation of the provisions of the Penal Code." [26] The same jurist, as ponente for this Court in *United States vs. Guy-Sayco*, [27] decided the next year, had occasion to state: "In order to consider that an unlawful aggression was actually committed, it is necessary that an attack or material aggression, an offensive act positively determining the intent of the aggressor to cause

an injury shall have been made; a mere threatening or intimidating attitude is not sufficient to justify the commission of an act which is punishable per se, and allow a claim of exemption from liability on the ground that it was committed in self-defense. It has always been so recognized in the decisions of the courts, in accordance with the provisions of the Penal Code." [28] Such an approach is reflected in all subsequent decisions, in one of which, *People vs. Yuman*, [29] this Court speaking this time through Justice Recto, with a citation from applicable decisions of the Supreme Court of Spain, categorically affirmed that not only must there be such an act of unlawful aggression, but it must be of that character as to put in real peril the life or the personal safety of the accused. There is nothing in the version of appellants, even disregarding its inherent improbability, that could in any wise meet the test of unlawful aggression as thus authoritatively set forth by this Tribunal.

3. In the brief of the People of the Philippines as appellee, reliance is likewise placed on what it referred to as physical facts which belie the plea of self-defense. Thus: "Prosecution evidence Exh. 'D-2' * * *, which is one of the pictures taken soon after the shooting, of the body of deceased Edgar Dilig sprawled on the threshold of the store's main door, is an eloquent proof of the fact that scarcely had Edgar Dilig entered the store's main door when he was treacherously felled down by gunshots. This physical fact belies appellant Rustum de la Torre's claim that he shot Edgar Dilig while the latter was at a distance of about three (3) meters away from him * * * It is an admitted fact that the distance from the store's main door to the cashier's box or counter behind which Rustum de la Torre was positioned at the time, and in front of which Lito Perez was then standing, is ten (10) meters * * * Exh. 'D-3' * * * is another picture taken of the sprawled body of the late Edgar Dilig with his revolver still tucked inside the waistband of his pants which is indicative of his unpreparedness when he was fired upon simultaneously by the appellants with their high-calibered weapons. The fact that Edgar Dilig received a total of thirteen gunshot wounds * * * is inconsistent with the claim of appellants that they fired upon the former in self-defense." [30]

4. Nothing is left, therefore, except to affirm the judgment of conviction. A modification of the sentence, as was already mentioned, is indicated, for appellant Rustum de la Torre should be credited with the mitigating circumstance of voluntary surrender. Thus, on this point, the brief of the People of the Philippines again is worth quoting: "The claim of appellant Rustum de la Torre that he voluntarily surrendered to the authorities appears to be well taken. We are, therefore, constrained to take exception to the trial court's non-appreciation of his mitigating, circumstance insofar as appellant Rustum de la Torre is concerned. The prosecution itself, thru its own witness P.C. Sgt. Clarito Labayen confirmed the fact that appellant Rustum de la Torre surrendered to him accompanied by appellant Lito Perez in the afternoon of July 10, 1966 at the PC Headquarters at Hinigaran, and on the same occasion also surrendered the pistolized carbine used in shooting Edgar Dilig * * *. As a matter of fact, this enabled the prosecution to avail of and present the same pistolized carbine * * * as evidence. The issuance of the warrant for the arrest of said appellant on July 12, 1966 did not necessarily mean that the latter was then at large. Its issuance must have been brought about by the fact that the complaint filed by the Chief of Police on the same date did not indicate whether or not said appellant was in custody of the law or at large * * *." [31]

WHEREFORE, the judgment of conviction for the crime of murder as defined and penalized under Article 248 of the Revised Penal Code is affirmed as to both appellants. Appellant Lito Perez is thus sentenced to the penalty of reclusion perpetua in accordance with the appealed decision of December 5, 1968. The sentence imposed in such decision as to appellant Rustum de la Torre is however modified in view of the existence of the mitigating circumstance of voluntary surrender, which the lower court did not appreciate, and, in line with Section 1 of the Indeterminate Sentence Law, [32] he is sentenced to an imprisonment the minimum of which should not be less than ten years and one day of prison mayor and the maximum of which should not be more than twenty years of reclusion temporal. Appellants are likewise condemned to pay an indemnity of P12,000.00 the heirs of the

deceased Edgar Dilig.

Zaldivar, (Chairman), Antonio, Fernandez, and Aquino, JJ., concur.

Barredo, J., took no part.

[1] T.s.n., Session of May 25, 1967, 59, 65; Session of November 7, 1967, 323.

[2] T.s.n., Session of May 25, 1967, 59, 60, 69.

[3] Ibid, 60, Session of November 7, 1967, 234.

[4] Ibid, 61.

[5] Ibid, 61, 62, 89.

[6] Ibid, 36, 37.

[7] Ibid, 39, 40.

[8] Ibid, 41.

[9] Ibid, 42, 43.

[10] Ibid, 43, 44.

[11] Ibid, 44, 45; Session on June 7, 1967, 101.

[12] Ibid, 46.

[13] Ibid, 47, 48; Session on June 7, 1967, 102.

[14] Ibid, 46-50.

[15] Ibid, 51, 52.

[16] Ibid, 52, 53, 54.

[17] Ibid, 54.

[18] Ibid, 55.

[19] Ibid, 228-229; Session of November 7, 1967.

[20] Cf. *People vs. Davis*. 111 Phil. 67 (1961), citing *People vs. Gimena*, 59 Phil. 569 (1934).

[21] According to Article 11 of the Revised Penal Code: "The following do not incur any criminal liability: 1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur: First, Unlawful aggression; Second. Reasonable necessity of the means employed to prevent or repel it; Third. Lack of sufficient provocation on the part of the person defending himself."

[22] G.R. No. L-27259, February 27, 1974. The citation from the opinion of Justice Pablo came from *People vs. Miranda* 90 (1931). The cases referred to as the opinion of Manlapaz started from *United States vs. Gonzales*, 8 Phil. 442 (1907) up to and including *People vs. Llamera*, G.R. No. L-21604, May 25, 1973, 51 SCRA 48.

[23] 9 Phil. 544.

[24] G.R. No. L-26750, Aug. 18, 1972, 46 SCRA 522. The other cases follow: *United States vs. Guy-Sayco*, 13

Phil. 292 (1909); United States vs. Bumanglag, 14 Phil. 644 (1909); United States vs. Bardelas, 16 Phil. 46 (1910); United States vs. Santos, 17 Phil. 87 (1910); United States vs. Banzuela, 31 Phil. 564 (1915); People vs. Nanquil, 43 Phil. 232 (1922); People vs. Gutierrez, 53 Phil 609 (1929); People vs. Payumo, 54 Phil. 181 (1929); People vs. Turno, 59 Phil. 463 (1934); People vs. Yuman, 61 Phil. 786 (1935); People vs. Ansoyon. 75 Phil. 772 (1946); People vs. Visagar, 93 Phil. 319 (1953); People vs. Aragon, 107 Phil. 706 (1960); People vs. Bautista, G.R. No. L-17772, Oct. 31, 1962, 6 SCRA 522; People vs. Mendoza, G.R. No. L-16392, Jan. 30, 1965, 13 SCRA 11; People vs. Sabio, L-23734, April 27, 1967, 19 SCRA 901; People vs. De Leon, G.R. No. L-28480, Sept. 30, 1971, 41 SCRA 120; People vs. Ordiales, 30956, Nov. 23, 1971, 42 SCRA 238.

[25] 9 Phil. 544 (1908).

[26] Ibid, 546.

[27] 13 Phil. 292 (1909).

[28] Ibid, 295-296.

[29] 61 Phil. 786 (1935).

[30] Brief for the Appellee, 13-14.

[31] Ibid, 16-17.

[32] Act No. 4103.

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