

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DON VEGA Y RAMIL, ACCUSED-APPELLANT.

Ponente: SORONGON, E.D., J.

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SORONGON, E.D., J.

This is an appeal from the May 31, 2011 Decision[1] of the Regional Trial Court (RTC) of Manila, Branch 42 in Criminal Case No. 09-266191, finding Don Vega y Ramil (accused-appellant) guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua.

THE FACTS

The Information[2] charging accused-appellant with Murder alleged:

That on or about January 18, 2009, in the City of Manila, Philippines, the said accused, with intent to kill, qualified with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one MANUEL ISIP Y PADILLA, @ Antuling, by then and there repeatedly stabbing the latter on different parts of his body with a bladed weapon, thereby inflicting upon the said MANUEL ISIP Y PADILLA @ Antuling mortal stab wounds which were the direct and immediate cause of his death thereafter.

CONTRARY TO LAW.

Upon his arraignment on February 11, 2009 accused-appellant pleaded not guilty to the charge. Thereafter, trial ensued.

The witnesses for the State were SPO2 Edmundo Cabal, Jennifer S. Torres, Aldrin R. Fernandez, Dr. Romeo T. Salen and Maricel A. Calixto, whose version of the incident is summarized by the trial court in the assailed decision and adopted by the Office of the Solicitor General, in its Brief, viz:

x x x on 18, January 2009 at about 11:30 in the evening, the victim, Manuel Padilla Isip, was at Arellano Street, Malate, Manila, because his friend, a certain Ogad Venus, was celebrating his birthday. Among his drinking buddies was Aldrin Roldan Fernandez, witness for the prosecution. They were around fifteen at that time, including the celebrator. While drinking, chatting, and listening to music, they spotted accused Don Vega who was about four arms length away sniffing rugby from a bottle. After a few hours, Don Vega approached them and caused a disturbance. He smashed several items. Victim Manuel Isip tried to pacify accused, saying, "pre, huwag naman dito, kasi may nagkakasiyahan dito" but accused harshly replied, "huwag kang makialam dito, baka ikaw ang samain." victim Manuel Isip did not comment and merely turn(ed) his back to avert a bigger trouble. While the victim's back was turned on him, accused suddenly grabbed (the) victim from behind, wrapped his left arm around (the) victim's neck and using his right hand, plunged a knife to his (Manuel's) chest. Victim Manuel Isip was rushed to the Ospital ng Maynila but was declared "dead on arrival" (TSN, pp. 3-8, February 9, 2009).

The victim (Manuel Isip) suffered six (6) stab wounds and one abrasion on the body. The cause of death is the four stabbed wounds that penetrated the frontal cavities of the chest (TSN, pp. 5-6, August 17, 2010).[3]

The defense offered the lone testimony of accused-appellant which was rehashed by the trial court in its decision[4], in this manner:

For its part, the defense presented accused himself, who painted an entirely different picture of the incident. He claimed that on 18 January 2009, at about 11:00 o'clock in the evening, He was along Tuazon St., San Andres, Manila, drinking with victim Manuel Isip and a certain "Fernandez", together with the birthday celebrator called "Ogad". A certain "Jeffrey" and the father of the celebrator were also there. More than fifteen joined the drinking spree. The mood was fine. He requested victim Manuel Isip to play his theme song. The victim asked him to wait because there were many who made similar request. He reiterated his request to victim several times but he ignored him. He then approached the victim, but the latter punched him. Upset, he went back to his table and picked up a bladed weapon. Victim Manuel Isip suddenly charged towards him, so he stabbed him. He thought people will pacify him (accused), but he was wrong. He then dashed to his house because people were ganging up on him. He was apprehended inside his abode and he voluntarily surrendered to those who arrested him. Victim was unarmed. It was unfortunate because he did not have previous "bad blood" with victim. He regrets what has happened; it was unwilling.

The trial court rendered the assailed decision finding accused-appellant guilty as charged, thus:

WHEREFORE, the Court finds accused DON VEGA Y RAMIL guilty beyond reasonable doubt of the crime of MURDER. He is hereby sentenced to suffer the penalty of Reclusion Perpetua. Accused is further ordered to pay Fifty Thousand Pesos (Php50,000.00) as civil indemnity and P50,000.00 as moral damages to the heirs of Manuela Padilla Isip.

SO ORDERED.[5]

Hence, this appeal alleging that:

I.

THE TRIAL COURT SERIOUSLY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE ATTENDANCE OF THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE;

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

We deny the appeal and sustain the conviction of the accused-appellant.

In his bid to exculpate himself from criminal liability, accused-appellant offered the theory of self defense. He admits being the author of the death of the victim but invokes this justifying circumstance.

In order for self-defense to be appreciated, accused-appellant must prove to the satisfaction of the court by clear and convincing evidence the following elements: (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.[6]

In self-defense unlawful aggression is a primordial element, a condition sine qua non. If no unlawful aggression attributed to the victim is established, self-defense is unavailing, because there would be nothing to repel[7]. The character of the element of unlawful aggression has been cogently described in *People v. Nugas*[8] as follows:

"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.

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”.

As earlier mentioned, by invoking self-defense accused-appellant in effect admitted killing the victim and it becomes incumbent upon him to prove the justifying circumstance to the satisfaction of the court[9]. The rationale for the shifting of the burden of evidence is that the accused, by his admission, is to be held criminally liable unless he satisfactorily established the facts of self-defense. But the burden to prove guilt beyond reasonable doubt is not thereby lifted from the shoulder of the State, which carries it until the end of the proceedings[10]. In other words, only the onus probandi shifts to the accused, for self-defense is an affirmative allegation that must be established with certainty by sufficient and satisfactory proof[11]. He must now discharge the burden by relying on the strength of his own evidence, not on the weakness of that of the prosecution, considering that the prosecution's evidence, even if weak, cannot be disbelieved in view of his admission of the killing[12]. Here, accused-appellant failed to discharge this burden, hence, self-defense was not a viable defense for him.

In the instant case, the trial court correctly held that the elements of self-defense are lacking. First, accused-appellant, failed to prove that there was unlawful aggression on the part of Manuel. Aside from his self-serving statement that it was Manuel who punched and attacked him, yet none of the persons present at the incident and witnessed it corroborated his account. Neither did he submit any medical records showing that he sustained injuries as a result of the attack by Manuel. Thus, failure on his part to present credible, clear and convincing evidence, accused-appellant's claim of self-defense is hallow. Second, even assuming *arguendo* that it was the unarmed victim who initiated the aggression, we find that the means employed by the accused-appellant in repelling the attack by the use of a bladed weapon was not reasonably necessary. The testimony of Dr. Romeo T. Salen[13], the medico-legal officer who conducted the autopsy examination on the body of the victim, revealed that Manuel sustained seven injuries, six stab wounds and one abrasion. Dr. Salen found that the four stab wounds on the chest of the victim were fatal and the caused of his death are the stab wounds on his trunk. Clearly, the wounds inflicted by accused-appellant on the victim demonstrate a determined effort to kill the victim and not merely to defend oneself.[14] As it has been repeatedly ruled, the nature, number and location of the wounds sustained by the victim disprove a plea of self-defense.[15] Third, there was no sufficient provocation on the part of Manuel. Based on the account of the witnesses of the prosecution, Manuel merely scolded accused-appellant to refrain from breaking things and making any unnecessary disturbance. In fact, when accused-appellant uttered harsh words against him, Manuel did not make a comment and instead turned his back from the former. It was accused-appellant who suddenly rushed to the victim and stabbed the latter several times in the chest. It is apparent that there was no provocation from Manuel.

We also note the actuation of accused appellant after the incident. His flight from the place where the crime was committed, his non-reporting of the crime to the police, and his failure to surrender to the police authorities

immediately after the commission of the crime fully warranted the trial court's rejection of his claim of self-defense.

Anent accused-appellant's contention regarding the failure of the prosecution to establish his guilty beyond reasonable doubt, we equally reject such a stance. The detailed account of the prosecution witnesses identifying accused-appellant as the assailant of Manuel and of what transpired on January 18, 2009 was sufficient to convict him of the crime charged, to wit:

Testimony of Aldrin Fernandez:

Q:

On January 18, 2009 at about 11:30 in the evening, where were you?

A:

Arellano Street, Malate, Manila, ma'am.

Q:

And what were you doing in Arellano street?

A:

There was a birthday celebration regarding one of my friends, ma'am.

Q:

And Mr. Witness, could you please name this friend of yours who was celebrating his birthday on that day?

A:

Ogan Venus, ma'am.

Q:

And how many were you together with the birthday celebrant?

A:

Fifteen (15), ma'am.

xxx xxx xxx

Q:

And during the birthday celebration Mr. witness, what were you doing together with your friends?

A:

We are having conversation, ma'am.

Q:

What else?

A:

Listening to music ma'am.

Q:

What else, Mr. witness?

A:

Drinking, ma'am.

Q:

And while you were celebrating the birthday of your friend Ogan Mr. witness, did you recall any unusual incident that took place?

A:

Not so far away there was this person Don Vega, ma'am.

Q:

And what was so unusual about this Don Vega, Mr. witness?

A:

He was carrying a bottle and sniffing rugby, ma'am.

Q:

How far was Don Vega from your group at that time?

A:

From the witness stand to the opposite wall of the courtroom, ma'am.

ATTY. GUIYAB

About four (4) arms length, Your Honor.

FISCAL DANTA

Q:

And what happened Mr. witness, after you saw this Don Vega sniffing rugby?

A:

After a few hours he approached us and “nagwawala.”

Q:

What specifically did he do, Mr. witness?

A:

He broke some things, ma'am. “Nagbasag-basag”

Q:

And after this Don Vega “nagwawala” or broke things, what happened next, Mr. witness?

A:

He was pacified by Manuel Isip, ma'am.

Q:

And how did this Manuel Isip pacify Don Vega?

A:

He just talked to him ma'am.

Q:

And what specifically did Manuel Isip utter to Don Vega?

A:

“Pre huwag naman dito, kasi may nagkakasiyahan dito.”

Q:

What was the response of accused Don Vega to the utterance of Manuel Isip?

A:

Don Vega uttered “huwag kang makiki-alam dito baka ikaw ang samain.”

Q:

And what was the response of Manuel Isip to the reply of Don Vega, Mr. witness?

A:

He did not make any comment, he just turned his back so as not to create a bigger trouble.

Q:

And what happened next Mr. witness, when Manuel Isip turned his back against accused Don Vega?

A:

“Sinunggaban siya ni Don Vega.”

Q:

Mr. witness, you stated that “sinunggaban ni Don Vega si Manuel Isip”, could you please describe before the Honorable Court how did accused Don Vega sinunggaban si Manuel Isip?

TRIAL DEPUTY

Witness using his left hand (arm) tried to wrap it around the neck of the victim, Manuel Isip?

FISCAL DANTA**Q:**

And what happened next, Mr. witness, after Don Vega wrapped his left arm around the neck of (the) victim, Manuel Isip?

A:

He stabbed him, ma'am.

Q:

And Mr. witness, what hand did Don Vega used in stabbing Manuel Isip?

A:

Right hand, ma'am.

Q:

And if you could still recall, what kind of weapon did he used in stabbing Manuel Isip?

A:

I can't remember ma'am, because after the stabbing incident he ran inside his house.

xxx xxx xxx

Q:

And Mr. witness, if this Don Vega is inside this Courtroom would you be able to identify him?

A:

Yes, ma'am.

Q:

Could you please step down from the witness stand and tap the shoulder of the accused Don Vega?

TRIAL DEPUTY

Witness went down from the witness stand approaching the bench of the detainees and tapped the right shoulder of the person seated at the extreme left and said person when asked his name answered by the name Don Vega, Your Honor.[16]

TESTIMONY OF MARICEL CALIXTO**Q:**

Ms. Witness on January 18, 2009 around ten in the evening, where were you?

A:

Yes, sir.

Q:

Can you tell us where were you at that time?

A:

Sa may ilog, sir.

xxx xxx xxx

Q:

And what were you doing there at may ilog?

A:

Nagiinuman.

xxx xxx xxx

Q:

Do you know a certain Manuel Isip madam witness?

A:

Yes, sir.

Q:

And did you see him that night?

A:

Yes, sir.

Q:

Where is Manuel Isip at th(a)t time?

A:

He was with his group having a drinking session, sir.

Q:

And how about Don Vega, do you know a certain Don Vega?

A:

Yes, sir.

Q:

Did you notice him that night?

A:

Yes, sir, nagraragbi at that time.

xx xxx xxx

Q: While drinking thereat, did you notice nay unusual?

A: Yes, sir.

Q: And can you tell us what was that incident?

A:

Don Vega was sniffing rubgy and Manuel Isip was having a drinking spree and I thought they were just punching to each other Manuel Isip and Don Vega but Don Vega was actually stabbing Manuel Isip already, sir.

Q:

So you mean to say you saw Don Vega stabbing Manuel Isip?

A:

Yes, sir.

Q:

Did you see the position of Manuel Isip and Don Vega at that time?

A:

Yes, sir.

Q:

Can you demonstrate the position of Don Vega and Manuel Isip at that time?

A:

Don Vega was behind Manuel Isip and the left arm was wrapped around the shoulder of Manuel Isip while the other hand the right hand was used to stab Manuel Isip from behind, sir.

Q:

Did you come to know how many times did this Don Vega stabbed Manuel Isip?

A:

Many times, sir.

xxx xxx xxx

Q:

You mentioned of Don Vega stabbed Manuel Isip and if this person (is) present in Court, will you be able to identify him, will you be able to identify Don Vega?

A:

Yes, sir.

Q:

Where is Don Vega?

A:

He is here, sir.

TRIAL DEPUTY:

A:

The witness is pointing to a lone man seated at the detainees bench and when asked his name, Your Honor, he answered that his name is Don Vega.[17]

Finally, we quote with affirmation the observation[18] of the trial court, as follows:

“xxx xxx xxx Notably, the defense failed to adduce evidence of ill-motive against the said eyewitnesses to cause them to falsely testify against accused. Jurisprudentially entrenched it is that testimonies of witnesses who have no motive or reason to falsify or perjure their testimonies should be given credence.

The court has observed the deportment of the prosecution witnesses and found their testimonies to be candid, straightforward, and consistent, and by logical extension, trustworthy. Their unequivocal testimonies came across as truthful, inspiring belief thus. On the other hand, while accused disputes the testimonies of the said witnesses and present a different version of the incident, he failed to impute any motive on their part that will induce them to concoct lies to secure his conviction.

It is meet (sic) to point out that accused confessed to killing the victim but raised self-defense to exonerate himself from liability by making it appear that he stabbed accused because he charged towards him. It will be recalled, however, that the victim, by accused's admission, was devoid of any weapon at the time. One of the important elements of self-defense is that there be reasonable necessity of the means employed to prevent or repel the unlawful aggression. There is, in this case, none. The use of a bladed weapon to thwart the attack of an unarmed victim, there being no showing of the relative strength of the accused and the victim, cannot be considered rationally necessary to the employ of the means used. Indeed, charging towards accused can not even be considered an unlawful aggression absent showing of intention of the victim to harm accused. For self-defense to lie, the person defending himself must have been attacked with actual physical force. Axiomatic it is that an accused who asserts self-defense admits his infliction of the fatal blows and thus bears the burden

of satisfactorily establishing all the elements of self-defense. On this score, the theory of self defense falls flat on its face.

Oddly, considered that accused claimed there were at least fifteen people who have witnessed the incident, he failed to present any witness to fortify his version of the incident that the killing was a form of self-defense and not attended by treachery.

The prosecution's version of what happened during the incident is worthy of belief. The qualifying circumstance of treachery has been demonstrated by proof beyond reasonable doubt. The conscious adoption by accused of the means, form and method of attack qualified the killing to murder. When accused suddenly grabbed the victim from behind and wrapped his left arm over the neck of the victim, he deliberately ensured that the victim cannot retaliate or defend himself from the attack. A sudden attack with a bladed weapon against an unarmed victim constitutes treachery.

As to the offense charged, we commend with approval the trial court's finding that the killing of Manuel was attended by treachery qualifying the crime to murder. In *People vs. Dolorido*,^[19] the Supreme Court held that:

Paragraph 16 of Article 14 of the Revised Penal Code (RPC) defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him. The "essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself."

Applying the foregoing pronouncement, we find that *alevosia* is thus present in the case at bar. From the statements of Fernandez^[20] and Calixto^[21], accused-appellant wrapped his arm around the neck of Manuel and stabbed the victim the moment he turned his back from accused-appellant. Evidently, the attack is so sudden and unexpected preventing any chance from the victim to defend himself. In other words, accused-appellant's position in attacking Manuel rendered the victim defenseless and unable to retaliate. Moreso, the fatality and quantity of the stab wounds forestalled any possibility on the part of Manuel of resisting the attack. All told, the attack was executed in a manner that tended to directly and specifically ensure the execution of the offense.

While we affirm the factual findings and the penalty of reclusion perpetua imposed by the trial court, however, it is necessary to modify the award of damages. In light of the rulings of the Supreme Court in *People vs. Malicdem*^[22] and *People vs. Laurio*^[23], the award of civil indemnity and moral damages to the heirs of Manuel is increased from Php50,000.00 to Php75,000.00. Furthermore, the award of actual damages in the amount of Php14,000.00 as funeral expense is also warranted as the same was duly proven by an official receipt^[24] from Funeraria Floresco.

The heirs of the victim should as well be awarded exemplary damages in the amount of Php30,000.00 in light of the attendant circumstance of treachery. Under Article 2230 of the Civil Code, exemplary damages may be granted when the crime was committed with one or more aggravating circumstance. It was immaterial that such aggravating circumstance was necessary to qualify the killing of each victim as murder.^[25]

Finally, in addition and in conformity with current policy, we impose interest on all the monetary awards for damages at the legal rate of 6% per annum from date of finality of this Decision until fully paid.^[26]

WHEREFORE, the instant appeal is DISMISSED. The Decision of the Regional Trial Court of Manila, Branch 42 dated May 31, 2011 in Criminal Case No. 09-266191 is AFFIRMED WITH MODIFICATION in that

accused-appellant Don Vega y Ramil is ordered to pay the heirs of Manuel Padilla Isip the following: a) Php75,000.00 as civil indemnity; b) Php75,000.00 as moral damages; c) Php14,000.00 as actual damages; and d) Php30,000.00 as exemplary damages. Further, all monetary awards for damages shall earn interest at the legal rate of 6% per annum from date of finality of this Decision until full payment thereof.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the court.

Carandang, R.D., Chairman and Gonzales-Sison, M., JJ., concur.

[1] Rollo, pp. 33-37.

[2] Rollo, p. 11.

[3] Brief for the Appellee, rollo, pp. 75-76.

[4] Rollo, page 34-35

[5] Rollo, p. 37.

[6] Article II (1), Revised Penal Code

[7] Calim v. Court of Appeals, G.R. No. 140065, February 13, 2001, 351 SCRA 559, 571.

[8] G.R. No. 172606, November 23, 2011, 661 SCRA 159, 167-168.

[9] People v. Capisonda, 1 Phil. 575 (1902) as cited in People v. Del Castillo January 18, 2012 663 SCRA 226, 244

[10] People v. Del Castillo, 663 SCRA 226

[11] People v. Gelera, G.R. No. 121377, August 15, 1997, 277 SCRA 450, 461; *ibid*.

[12] People v. Molina, G.R. No. 59436, August 28, 1992 213 SCRA 52, 65; *ibid*.

[13] Transcript of Stenographic Notes (TSN), August 17, 2010, pp. 1-9.

[14] People vs. Galvez, G.R. No. 130397, January 17, 2002.

[15] People vs. Concillado, G.R. No. 181204, November 28, 2011.

[16] TSN, February 9, 2010, pp. 3-7.

[17] TSN, December 7, 2010, pp. 3-5.

[18] Decision, Rollo pages 37-37 (citation deleted)

[19] G.R. No. 191721, January 12, 2011.

[20] TSN, February 9, 2010, pp. 6-7.

[21] TSN, December 7, 2010, p. 4.

[22] G.R. No. 184601, November 12, 2012.

[23] G.R. No. 182523, September 13, 2012.

[24] Exhibit “G” for the Prosecution, records, p. 71.

[25] Supra at note no. 8.

[26] People vs. Escleto, G.R. No. 183706, April 25, 2012.

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