

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EULOGIO NEPTUNO Y ABEJURO, EDDIE NEPTUNO Y APUYAN AND MARITES NEPTUNO Y APUYAN, ACCUSED-APPELLANTS.

Ponente: REYES-CARPIO, A., J.

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REYES-CARPIO, A., J.:

Before Us is the appeal from the 46-page Joint Decision dated October 15, 2012[2] of the Regional Trial Court, Branch 6, Legazpi City in Criminal Cases Nos. 11214 and 11215,[3] for Murder, the decretal portion of which reads:

WHEREFORE, in the light of the foregoing disquisitions, judgment is hereby rendered:

(A.) In Criminal Case No. 11214, Eulogio Neptuno y Abejuro and Eddie Neptuno y Apuyan alias “BOY” are found GUILTY beyond reasonable doubt as principals by direct participation of the crime of HOMICIDE pursuant to Article 17, par. 1 and Article 249 of the Revised Penal Code with the mitigating circumstance of immediate vindication of a grave offense under Article 13, par. 5 of the Revised Penal Code and are hereby sentenced to suffer an indeterminate penalty of SIX (6) years and ONE (1) day of PRISION MAYOR minimum as the MINIMUM to TWELVE (12) years and ONE (1) day of RECLUSION TEMPORAL minimum as the MAXIMUM. Accused are to be credited in the service of sentence the period of imprisonment they have undergone during their period of detention pursuant to Article 29 of the Revised Penal Code.

(B) Marites Neptuno y Apuyan for lack of evidence is hereby ACQUITTED in Criminal Case No. 11214.

(C) In Criminal Case No. 11214, Eulogio Neptuno y Abejuro and Eddie Neptuno y Apuyan alias “BOY” are further ordered to solidarily pay the legal heirs of Edgar Ascaño, Jr. the following:

- (cc) P19,728.15 as actual and compensatory damages;
- (dd) P50,000.00 as civil indemnity;
- (ee) P25,000.00 as temperate damages;
- (ff) P50,000.00 as moral damages for the violent death of Edgar Ascaño, Jr.

x x x

(B.) In Criminal Case No. 11215, Marites Neptuno y Apuyan is hereby found GUILTY as an ACCOMPLICE to the crime of HOMICIDE for the death of Edgar Ascaño, Sr. pursuant to Articles 18, 52 and Article 249 of the Revised Penal Code with the mitigating circumstance of immediate vindication of a grave offense under Article 13 par. 5 of the Revised Penal Code and is hereby sentenced to suffer an indeterminate penalty of FOUR (4) years, TWO (2) months and ONE (1) day of PRISION CORRECCIONAL maximum as the MINIMUM to six (6) years and ONE (1) day of PRISION MAYOR minimum as the MAXIMUM. All three (3) accused are to be credited in the service of sentence the period of imprisonment they have undergone during their period of detention pursuant to Article 29 of the Revised Penal Code.

(c.) In Criminal Case No. 11215, Eulogio Neptuno y Abejuro, Eddie Neptuno y Apuyan alias “Boy” and Marites Neptuno y Apuyan are further ordered to pay the legal heirs of Edgar Ascaño, Sr. the following:

(cc) P50,000.00 as civil indemnity; and
(dd) P25,000.00 as temperate damages.

Costs against the accused.

SO ORDERED.[4]

THE FACTS

The Amended[5] Information dated January 30, 2008,[6] in Criminal Case No. 11214 for Murder reads:

The undersigned Prosecution Attorney, City of Legazpi, hereby accuses EULOGIO NEPTUNO y ABEJURO, EDDIE NEPTUNO y APUYAN @ “BOY” and MARITES NEPTUNO y APUYAN for the crime of MURDER, as defined and penalized under Article 248 of the Revised Penal Code, as amended, committed as follows:

That on or about the 25[th] day of December 2007, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping each other for a common purpose, with intent to kill, did then and there willfully, unlawfully and feloniously, with evident premeditation and treachery, suddenly attack, assault and stab one EDGAR BAULA ASCAÑO, Jr., with a knife, thereby inflicting upon the latter injuries which directly caused the death of the said EDGAR BAULA ASCAÑO, Jr.

CONTRARY TO LAW.[7]

On the other hand, for the death of Edgar Azores Ascaño, Sr., the Amended Information[8] in Criminal Case No. 11215, reads:

The undersigned Prosecution Attorney, City of Legazpi, hereby accuses EULOGIO NEPTUNO Y ABEJURO, EDDIE NEPTUNO Y APUYAN @ “BOY” and MARITES NEPTUNO Y APUYAN, for the crime of MURDER, as defined and penalized under Article 248 of the Revised Penal Code, as amended, committed as follows:

That on or about the 25th day of December, 2007 in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other for a common purpose, with intent to kill and with aggravating circumstance of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously take turns in stabbing, hacking and beating EDGAR AZORES ASCAÑO, SR. hitting him in different parts of his body, thereby inflicting injuries, to wit:

Multiple hacked wound
T8 10 cm. Subcostal area (L)
T4 12 cm. Left anterior chest
HW 10 cm. D/3rd left area; HW 10 cm. Mid parietal area
HW 10 cm. Right parietal area

from which injuries the following complications such as cardiopulmonary arrest secondary to pneumonia, bilateral and intestinal obstruction resulted to the death of said EDGAR AZORES ASCAÑO, SR. on June 16, 2008, to the damage and prejudice of his heirs.

CONTRARY TO LAW.[9] (Emphasis supplied)

From the records, pieces of evidence presented and offered by the parties, the testimonies of thirteen witnesses for the prosecution and twelve witnesses for the defense, the respective versions of the Prosecution and the Defense

were summarized by the trial court as follows:

The Prosecution's Version:

While Linda[10] was inside her house at around 10:45 P.M. in the evening of December 24, 2007, she heard her brother-in-law, Kumi[11] hurl a challenge to a fight to particularly no one by shouting in the bicol dialect, to wit: “lumuruwas na an mga oragon” or loosely translated in the English language “those who are tough you better come out”. Next that she noticed was that a stone was thrown hitting the galvanized roof of the house of the Neptunos. When Linda went out to verify by the gate of her house she saw her neighbors Eloy,[12] Eddie and Marites come out their house. Then the three gathered stones which they in turn hurled at Linda's house. The stones thrown landed at the roof of Linda's house. Thus Linda shouted at the three Neptunos not to further throw stones at her house as she/they was/were not responsible for stoning the house of the Neptunos. Despite Linda's disclaimer [of not throwing the stone at house of the Neptunos] Eddie shouted back in the Bicol dialect in this wise, “anong bako, urubusan na ng lahi” or if loosely translated in English would mean “Do not deny now, let us finish this [even if we have to kill each other] up to the last of kin” and the three Neptunos continued to throw stones at her house.

At around 11:30 in the evening when the throwing of stones at her house ceased, Linda and her husband-Edgar, Sr. had the incident reported and blotted at the Office of the Barangay Captain x x x. After reporting the incident at the office of the punong barangay, the Ascaño couple headed back home. When the couple arrived home some police officers invited them to go to the police station. Mother and daughter – Linda and Edelyn – together with mother and daughter – Felisa and Marites – on board the police car went together to the police station to record the stoning incidents. After recording the incidents at the Community Police Assistance Center 1 (CPAC 1) mother and daughter went back home and reached their residence at around 1:00 o'clock in the early morning of December 25, 2007.

At around this time Nono told Linda that he was going home at his house nearby but Linda's husband-Edgar, Sr. intimated that he would like to go along with his son – Nono to sleep at the house of the latter. Linda would later notice however that her husband – Edgar, Sr. headed back to her house with Nono accompanying his father – Edgar Sr. back to the latter's house. Father and son at least went into this kind of a routine with the duo going to and from the house of the elder Ascaño and back to the house of the younger Ascaño.

The third time however when the father and son- Edgar Sr. and Nono – were on the street on their way back to the house of the elder Ascaño, Linda who was inside their fence and beside her sari-sari store, witnessed Eddie, who was armed with a knife, and Eloy, who was armed with a bolo attack (sic) and assault (sic) Edgar, Sr. and Nono. Eddie and Eloy hacked and stabbed her husband and son repeatedly hitting them on the different parts of their bodies. Eloy hacked her husband [with a bolo] while Eddie stabbed her son – Nono [with a knife]. Marites likewise participated in the assault by striking Edgar, Sr. with a coconut lumber. And while the three (3) Neptunos were hacking, stabbing, beating and ganging up on Edgar, Sr. and Nono, Felisa trained her flashlight on Edgar, Sr. and Nono and egged Eloy, Eddie and Marites to continue with the attack and kill Edgar, Sr. and Nono (“sige pa, sige pa, kastahe, gadana na nindo” or loosely translated “go ahead, go ahead, hit them until they die” x x x. That Nono after the initial assault was able to run in the ricefield but went back to help his father – Edgar, Sr. but Eddie stabbed Nono x x x. Linda shouted and implored the assailants to stop but Eloy and Eddie continued to attack Nono and Edgar, Sr. until Jun Jun came out of the house to help his uncle -Edgar, Sr. Jun Jun however was struck with a bamboo by Eloy after the latter threw his bolo to the ground but Jun Jun was able to ward off the blow which caused Eloy to fall to the ground. When Eddie and Marites saw Jun Jun came out of the house, the brother and sister left the scene of the incident and headed to the house of Eddie.

Dolores Alcovindas (Dolores), wife of Nono confirmed the account of her mother-in-law-Linda- that her husband and father-in-law were going to and from their house and the house of the elder Ascaño. And that for the third time that the father and son were on their way back to the house of the elder Ascaño was the time that

Nono and Edgar, Sr. were attacked by Eloy, Eddie and Marites with Felisa focusing her flashlight on her husband and father-in-law while the three Neptunos were assaulting and ganging up on Nono and Edgar, Sr.

That when her mother-in-law shouted at the assailants to stop, Jun Jun and Edelyn came out of the house. Dolores likewise declared that Eloy before he can go back inside their house with his wife-Felisa-went back to the scene of the incident to retrieve the bolo he used in attacking Edgar, Sr., and Nono x x x. That when the assailants left the place of the incident she saw her father-in-law seated on the ground holding his belly while her husband-Nono- was down on the ground lying with his face up x x x.

Edelyn Blancaflor (Edelyn), likewise confirmed the stoning incidents and that her mother-Linda- and father-Edgar, Sr. - had the matter recorded at the Office of the Punong Barangay. That at around 11:00 o'clock in the evening of December 24, 2007 a police patrol car arrived at their residence and she and her mother were able to talk to the police. When the police invited her and her mother to the police station she saw Eddie came out of the house of his parents and threw a stone towards their house pointing to and blaming her as the one responsible. The police officer who witnessed the incident chided Eddie for attempting to fool the police x x x.

That she, her mother-in-law-Linda, Felisa and Marites went with the police to CPAC 1 to have the stoning incidents blotted. Then they were escorted back to their respective residences by the police. At around 3:00 o'clock in the morning of December 25, 2007, she heard her mother shout "tama na, tama na" ("stop it, stop it") and when she rushed out of her house she saw her brother-Nono-lying on the road and was no longer moving while her father-Edgar, Sr.- was holding his protuding [sic] intestines. Her sister-in-law-Dolores went hysterical and was shouting that her brother-Nono-was stabbed. At the time she went out [of] her house Felisa, Eddie and Marites were no longer at the scene of the incident except for Eloy, who struck her with a rake but nevertheless failed to hit her as she was able to evade the blow. x x x.

Jun Jun who stays in the house of his uncle-Edgar, Sr.- declares that around 10:00 P.M. of December 24, 2007 he and Nono were at the house of Herminia Barizo drinking liquor. He noticed that stones were thrown at the house of his uncle. Upon leaving the house of Herminia Barizo he discovered that Eddie was the person responsible of stoning the house of his uncle. In the early morning of December 25, 2007 at around 3:00 A.M. while sleeping inside the house of his uncle he was awakened by the shouts of her auntie Linda, who was shouting "that's enough, that's enough". When he went out of the house he saw his cousin-Nono- lying on the ground. He likewise witnessed Eloy and Eddie hack and stab his uncle- Edgar, Sr. while Marites hit Edgar, Sr. with a piece of wood. From inside the gate of the house of the elder Ascaño, Jun Jun shouted at the assailants to stop. Then Marites and Eddie departed while Eloy threw his bolo to the ground and left with his wife-Felisa. After Eloy however threw the bolo to the ground, he took hold of a piece of bamboo and used it to hit Edgar, Sr., but Jun Jun was instead the one hit by the blow. x x x

Herminia Barizo (Herminia), a long time resident of Barangay Bagong Abre, has a sari-sari store which is more or less 140 meters from the house of the spouses-Edgar, Sr. and Linda Ascaño. While she was in her store on that night of December 24, 2007 she heard the thudding sounds of stones being thrown at the house of Edgar, Sr. and Linda. She learned that indeed stones were thrown at the house of the latter when the spouses passed by her store to report and record the stoning incident at the office of the punong barangay. The spouses told her the person who stoned their house was Eddie.

In the early morning of December 25, 2007 between the hours of 2:00 A.M. to 3:00 A.M. Herminia heard a woman's voice coming from the house of Linda. Linda was shouting "tama na, tama na" ("enough, enough"). To check what was happening, Herminia proceeded to the house of Linda and hid somewhere in a canal where there were bushes. From where Herminia hid which is around 7 meters from the place of the incident, she witnessed this scenario, to wit: Nono was lying on the ground face-up. Eloy, Eddie and Marites were all assaulting Edgar, Sr. while Felisa was training her flashlight on the fallen father and son. Eloy hacked Edgar, Sr. with a bolo and Eddie stabbed the elder Ascaño with a knife while Marites hit them with a piece of wood. While the three (3) Neptunos were assaulting Edgar, Sr., Felisa was egging her kin to finish off the victims.

When Jun Jun came out of the house Eddie and Marites departed the scene while Eloy took hold of a piece of bamboo and hit Jun Jun with it. Jun Jun however got hold of the bamboo and pushed Eloy who fell to the ground. The latter stood up and left the place of the incident and went inside their house following Felisa x x x.[13]

The Version of the Defense:

The Neptuno family portrays their neighbor, the Ascaño family more particularly Nono, Edgar, Sr., and Kumi, as trouble makers in the barangay especially when the Ascaño boys are drunk. It is the habit and attitude of the Ascaño boys to throw stones at the Neptuno residence whenever they are drunk and would always challenge the Neptunos to a fight. The otherwise good relationship between the neighbors however turned sour sometime in the year 2005 when, Felisa, who was still the barangay captain of Bagong Abre that year, undertook to construct a line canal which would run through the front lot of the Ascaño property which is part of the barangay lot. The Ascaños resented the project and since then the Ascaño boys whenever are inebriated would challenge the Neptunos to a fight and would stone the Neptuno residence. In fact, on July 10, 2005, Edgar Sr. attempted to beat Felisa with a pipe x x x and a month before the Christmas eve and early Christmas incidents, Edgar, Sr. shot dead the dog of Felisa. On December 16, 2007, Vicente Ascaño, Ricardo Ascaño and Nono who were then having a drinking spree, again pelted (sic) the Neptuno house with stones x x x. The Neptunos however would always find ways to forgive the Ascaño trouble makers such when Nono after throwing stones at their residence would go to their house the following day and would seek a favor, i.e., to borrow rice for food. Felisa would always lend a helping hand whenever the Ascaños would need them x x x.

The propensity of the Ascaños to throw stones at the house of the Neptunos would be repeated again on that night before Christmas of December 2007 while the Neptuno family were celebrating the success of family member- Mary Grace – who just passed the licensure examinations for teachers. While the party was winding down at around 10:30 in the evening or thereabouts a great number of stones were thrown again hitting the roof and the wall of the house of the Neptunos. The stones were coming from different directions and when Eddie and Marites looked outside of their window they saw that Edgar, Sr., Nono, Kumi and Jun Jun, were the ones throwing the stones towards the direction of their house. Prior to the Ascaño boys hitting their house with stones, Edgar, Sr., had already challenged the Neptunos to a fight and had fired his gun at around 9:00 P.M. Moreover, when Eddie and Marites went out the house to check if damages were caused by the stones on the wall of the house, Kumi implored his brother – Edgar, Sr. to shoot them. (“Manoy, nagruluwas na, baradila na an”).

At the height of the stone throwing incident Mary Grace almost fainted from fear. The sibling of Felisa, Fe Madraso, likewise trembled with fear. Eddie then decided to contact his sister- Evangeline Camacho – who lives in Sorsogon to instruct her to report the matter to the police station and seek for police assistance.

Indeed, at around 11:00 P.M. a mobile police car arrived at their residence and Eddie, Marites and Felisa pointed out to the police officers Nono and Jun Jun, who were drinking outside the store of Linda and Edgar, Sr. and Kumi, who were inside the gate and similarly imbibing intoxicating liquor, as the persons responsible [for] throwing the stones at the house. Nono when pointed out to by Eddie to the police warned him to be careful with his accusations and even took hold of a bottle of Matador positioning as if to strike at the slightest provocation. The police officers then invited the Ascaños and Neptunos to go with them to the police station to record the matter and thresh things out between the families. Felisa, and Marites with Jomel Lopez went with the police to CPAC 1 and were able to record the incident at the police blotter x x x. From the police station Felisa and Marites were escorted back home by the police and Felisa upon arriving at the house at around 1:00 A.M. Had her feet soaked in warm water to ease an episode of hypertension.

At around 3:00 in the morning of that early Christmas morning Eddie decided to head home to his house which was about a hundred meters from the house of his parents. Sister-Marites-accompanied Eddie since Marites had decided to sleep at Eddie's house considering that her room at her parent[s']house was then occupied by

her auntie-Fe-and the latter's grandchild. When the siblings were now heading home to the house of Eddie and walking past by the house of the Ascaños, Eddie and Marites were attacked and assaulted by the Ascaños, namely; Edgar, Sr., Nono, Kumi and Jun Jun. Edgar. Sr. was armed with a bolo, Nono with a knife, Kumi with a bolo and Jun Jun with a lead pipe.

When Eddie and Marites went past by the house of the Ascaños, they heard a shout which went this way, “mga yudiputa kamu, kamu na an mga uragon digdi?” or loosely translated “sons of bitches, are you the tough ones in this place?” then suddenly from the left side of Eddie and Marites came Edgar, Sr. and Nono charging with Edgar, Sr. poised to hack Eddie while Nono was poised to stab Eddie. Upon instructions of Eddie, Marites was able to run for about five meters away from the charging Edgar, Sr. and Nono. Marites was then petrified when she witnessed Edgar, Sr. about to hack Eddie. As the elder Ascaño delivered a hacking blow directed at the head of Eddie, Eddie faced Edgar, Sr. and took hold of the hand of the latter, twisted the hand that was holding the bolo and pulled the hand towards the back of Edgar, Sr. As Eddie was holding Edgar, Sr., Kumi, armed with a bolo and Jun Jun, with a lead pipe appeared with Kumi charging towards Eddie and poised to attack with the bolo. Eddie to defend himself used the elder Ascaño, whose hand Eddie held from the back, as his shield in the hacking blows delivered by Kumi. But, Nono stabbed Eddie from his back side. Upon being stabbed by Nono, Eddie released Edgar, Sr. and faced Nono. But, when Eddie did so he was hacked in the head by the person nearest him who was Edgar, Sr. Even as Eddie was holding Edgar, Sr., Kumi continued to deliver hacking blows while Jun Jun beat Eddie with the lead pipe.

After Eddie was hacked in the head from behind by Edgar, Sr., Eddie fell to the ground but when Eddie was about to rise up after falling with his right knee touching the ground as if in a kneeling position, Nono again rushed towards Eddie poised to deliver a stabbing blow towards Eddie. Eddie recalled that he had a jungle knife tucked in his back and to repel the attack raised the knife towards the direction of Nono. When Eddie raised his head from a kneeling position he saw Edgar, Sr. about to hack Marites. Eloy who at this point heard the commotion went outside the house and when he saw Edgar, Sr. about to hack Marites, the elder Neptuno with a bamboo, hit the arm of the elder Ascaño but the latter faced Eloy. Eloy then for the second time hit Edgar, Sr. with the bamboo he was holding. Jun Jun then boxed Eloy who fell to the ground. Marites shouted for the assailants to stop and when the Ascaños did stop the assault she assisted Eddie to rise up. Eloy then went inside the house while Eddie aided by Marites proceeded to the house of Eddie. At the time Eddie and Marites were assaulted, Felisa was fast asleep inside the house and was only awakened by the curses and invectives of Linda and Jun Jun. Felisa only learned that her son and daughter were attacked when Eloy went inside the house and told her about it after the attacks had ceased. x x x.

To bolster their stand that Nono and Edgar, Sr. were the aggressors during the incidents that early Christmas morning, the defense presented Dindo Nuñez and Jherand Atun. Dindo declared that at around 2 A.M. of that day while on his way to the market to sell root crops he met Edgar, Sr. and Nono with bladed weapons walking unsteadily x x x. Thus, it is evident that the father and son were on the prowl for the Neptunos. And to discredit the testimony of Herminia Barizo, Jherand asserted that on his way home he actually met and talked with Herminia who was out on the street to verify shouts she heard while inside her sari-sari store. That when Jherand and Herminia proceeded to the place where the shouts came from Herminia disappeared mid-way through on the road going to the house of Linda. Hence, Herminia could not have witnessed the hacking and stabbing incidents. Jherand also declared that when he went past by the house of the Ascaños with blood still all over the road, he saw Kumi pounding a pipe on the ground shouting “to kill them all and prevent them from coming out” x x x suggesting that Kumi had continued to implore his brother and nephew to harm and/or kill the Neptunos.[14]

After trial, the Regional Trial Court found that, for the death of Edgar Ascaño, Jr., in Criminal Case No. 11214, accused-appellants Eddie and Eulogio were liable for homicide, with the mitigating circumstance of immediate vindication of a grave offense.

In Criminal Case No. 11215, the trial court found accused-appellants Eddie and Eulogio liable as principals by direct participation for the death of Edgar Ascaño, Sr., while Marites was liable as accomplice.

In view of the Notice of Appeal,[15] the records of the two cases were ordered transmitted to this Court.[16]

In the Appellants' Brief,[17] accused-appellants attributed the following errors on the part of the trial court:

First (1st) Assignment of Error. THE COURT A QUO ERRED IN FINDING THAT THE FIRST (1ST) REQUISITE OF SELF-DEFENSE (unlawful aggression) WAS NOT DULY ESTABLISHED DURING TRIAL.

Second (2nd) Assignment of Error. THE COURT A QUO ERRED IN FINDING THAT THE PRINCIPLES ATTACHED TO THE THEORY OF SELF-DEFENSE IN CRIMINAL CASES SHOULD BE MADE TO APPLY TO ALL APPELLANTS AND IN BOTH CASES WHEN IT WAS ONLY APELLANT EDDIE WHO INVOKED SUCH DEFENSE AND THAT IT WAS ONLY INVOKED INsofar AS CRIMINAL CASE NO. 11214 IS CONCERNED.

Third (3rd) Assignment of Error. THE COURT A QUO ERRED IN CONCLUDING THAT DEFENSE'S CHOICE OF NOT FORMALLY OFFERING EXHIBITS "24" – "24-J" SHOULD BE TAKEN AGAINST HEREIN APPELLANTS.

Fourth (4th) Assignment of Error. THE COURT A QUO ERRED WHEN IT OVERLOOKED CERTAIN MATERIAL FACTS ESTABLISHED DURING TRIAL THAT CAST SERIOUS DOUBTS ON THE VERACITY OF THE ALLEGATIONS BY THE PRIVATE COMPLAINANTS AGAINST HEREIN APPELLANTS.[18]

In Our Resolution dated January 29, 2014,[19] We deemed this case submitted for decision.

We now resolve.

First, on the self-defense angle.

Article 11 (1) of the Revised Penal Code provides the elements of self-defense as a justifying circumstance, thus:

ARTICLE 11. Justifying Circumstances. — The following do not incur any criminal liability:

- 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.

It is settled that when self-defense is invoked, the burden of evidence shifts to the accused to show that the killing was legally justified. Having owned the killing of the victim, the accused-appellants in this case should be able to prove to the satisfaction of the Court the elements of self-defense in order to avail of this extenuating circumstance. They must discharge this burden by clear and convincing evidence. When successful, an otherwise felonious deed would be excused, mainly predicated on the lack of criminal intent of the accused-appellants. Self-defense requires that there be (1) an unlawful aggression by the person injured or killed by the offender, (2) reasonable necessity of the means employed to prevent or repel that unlawful aggression, and (3) lack of sufficient provocation on the part of the person defending himself. All these conditions must concur.[20]

Unlawful aggression, a primordial element of self-defense, presupposes an actual, sudden and unexpected attack or imminent danger on the life and limb of a person; not just a mere threatening or intimidating attitude. To invoke self-defense successfully, there must have been an unlawful and unprovoked attack that endangered the

life of the accused, who was then forced to inflict severe wounds upon the assailant by employing reasonable means to resist the attack.[21] The unlawful aggression must be a continuing circumstance or must have been existing at the time the defense is made. A person making a defense has no more right to attack an aggressor when the unlawful aggression has ceased.[22]

We agree with the trial court that the unlawful aggression must be directed at the person of the accused and not on his property.[23]

In any event, assuming that the stoning of the house constitutes an unlawful aggression and while it was the victims' family which sparked the altercation by throwing stones at the house of accused-appellants in the evening of December 24, 2007, it must be remembered that there was an intervening event that occurred – the reporting of the incidents to the barangay and police – before the killing took place.

There was therefore no unlawful aggression but retaliation. In retaliation, the aggression that was started by the injured party already ceased to exist when the accused attacked him. In self-defense, the aggression was still existing when the aggressor was injured by the accused.[24]

Meanwhile, We do not find any merit in the claim of accused-appellant that it was only Eddie Neptuno who invoked self-defense and only for Criminal Case No. 11214. Although there were two informations filed, and which are distinguishable from each other, they both arose from the same incident which We cannot entirely separate and treat as truncated parts. Eulogio admitted using a piece of wood to defend his children Eddie and Marites. On this note, Article 11 (2) of the Revised Penal Code is applicable. It states:

- Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the provocation was given by the person attacked, that the one making defense had no part therein.

If the accused-appellant invoked the defense of a relative, he must be able to prove with clear and convincing evidence the essential requisites of self-defense.[25]

“Lady Justice may be blindfolded but she is neither blind nor naive. She can distinguish chicanery from wisdom, fallacious argument from common sense.”[26]

Meanwhile, accused-appellants claim that the failure to offer Exhibits “24” to “24-J” should not be taken against them, since “those pieces of evidence were matters that were obtained or caused to be obtained by the members of the PNP.”[27] Accused-appellants went on to say that:

Undoubtedly, it should have been the duty of the prosecution to present and offer the same as part of their evidence. Stated otherwise, the duty of the prosecution in presenting those pieces of evidence should not, by any stretch of imagination, be transferred upon the shoulders of herein appellants.[28]

Accused-appellants' argument is neither here nor there. It must be remembered that as part of the standard operating procedures being observed by the courts for purposes of marking of exhibits, those which are presented by the defense are numbered “1” and so on. On the other hand, the evidence of the prosecution are lettered “A” and so on.

It was the defense which presented Exhibits “24” to “Exhibits 24-J.” Hence, the formal offer should be done by the defense. At any rate, even assuming that the burden to offer the same lies in the prosecution, the failure to offer the same would not be fatal to the cause of the prosecution.

The trial court emphasized the worth of Exhibits “24” to “24-J” in this manner:

The Court is also perplexed why despite marking in evidence the ten (10) photographs (Exhibits “24” to “24-J”), x x x taken by the police investigators and identified by Police Inspector Rolly Marqueses depicting the crime scene and the places and positions where the jungle knife, scabbards, coco lumber and slippers were found by the police investigators and barangay captain, the defense omitted and failed to formally offer these photographs.

The explanation however to this suppression of demonstrative evidence is that the production and submission of the photographs to the Court will corroborate the testimonial and object evidences presented in Court by the prosecution instead of helping the theory of self-defense put forth by the accused. Its submission will likewise validate or cure any perceived procedural lapse committed by the prosecution in authenticating the evidence of the prosecution.

The considered view[,] however[,] of the Court is that it would be disingenuous on the part of the defense to suppress material evidence and thereby hide the truth from the Court while at the same [time] use such suppression as a legal strategy to gain an upperhand to question the authentication of the object evidences of the prosecution. This legal artifice the Court will not allow at the expense of truth and justice. The omitted photographs are therefore in the nature of willfully suppressed evidence which suppression raises the presumption that if produced would be adverse to the defense. x x x. Besides, the prosecution was able to show that the jungle knife, scabbards, coco lumber and slippers were properly handled by the police investigator and regularly turned over to the City Prosecutor's Office of Legazpi City. Thus, the object evidences recovered from the crime scene and mentioned in the police report are deemed consistent with and corroborates the real evidences presented to the Court (Exhibits “F”, “G”, “H”, “I” and “J”) by the prosecution.[29]

Simply stated, the pictures taken at the crime scene may be glossed over as the pieces of evidence recovered from the crime scene regularly and properly handled by the police investigators and turned over to the Office of the City Prosecutor.

Finally, accused-appellants claim that the trial court failed to appreciate material facts which if considered would change the court's disposition, viz:

- 1.) The glaring inconsistencies between the testimonies of the private complainants and that of their witnesses and the police investigation report and testimony of the police officer who conducted such investigation;
- 2.) The fact that based on the location of the scene of the incident and its relative distances from the house of the Ascaños and that of the Neptunos, it would have been highly unlikely that the Neptunos were the ones who waylaid them at the place so near their house;
- 3.) The fact that there was no fingerprint examination conducted on the knife allegedly used x x x, the leather scabbard x x x and wooden scabbard x x x supposedly gathered during the investigation at the scene of the incident. In fact, there was even no attempt to submit the same for fingerprint examination;
- 4.) The fact that the testimonies of the prosecution's supposed eye witnesses are so grossly inconsistent with the medical findings as testified to by the Medico-Legal that they become highly dubious, and;
- 5.) The fact that the testimonies of the prosecution's supposed eye witnesses are obviously bloated or exaggerated as to be incredible, or are not supported by other credible and admissible evidence.[30]

We are not convinced.

Accused-appellants claim while the private complainants averred that the Neptunos waylaid the victims and inflicted injuries upon them that eventually caused their deaths, the Police Report (as contained in the Complaint Assignment Sheet[31]) speaks of "tumultuous affray" and not murder or homicide. In other words,

accused-appellants would like to impress to the Court that what actually happened was “tumultuous affray” which is defined and penalized under Article 251 of the Revised Penal Code, to wit:

ARTICLE 251. Death Caused in a Tumultuous Affray. — When, while several persons, not composing groups organized for the common purpose of assaulting and attacking each other reciprocally, quarrel and assault each other in a confused and tumultuous manner, and in the course of the affray someone is killed, and it cannot be ascertained who actually killed the deceased, but the person or persons who inflicted serious physical injuries can be identified, such person or persons shall be punished by prisión mayor.

The following elements must therefore concur in order to apply this Article: (1) there be several persons; (2) that they did not compose groups organized for the common purpose of assaulting and attacking each other reciprocally; (3) these several persons quarrelled and assaulted one another in a confused and tumultuous manner; (4) someone was killed in the course of the affray; (5) it cannot be ascertained who actually killed the deceased; and (6) that the person or persons who inflicted serious physical injuries or who used violence can be identified.[32]

In *People v. Corpuz*,^[33] the Supreme Court held that there is no crime of death in a tumultuous affray if the quarrel is between two (2) well-known groups. In here, the groups involved in the fight were clearly identified – the Neptunos on one hand and the Ascaños on the other. Those who participated were not confused as to who should be assaulted and who must be protected or aided. The persons who assaulted and killed the victim were clearly identified. Since it was ascertained as to who actually killed the deceased, the death of the victim cannot be said to have been caused in a tumultuous affray.[34]

Even a reading of the Police Report as quoted^[35] readily shows that suspects and victims were properly identified. In any event, the use of the term “tumultuous affray” in the Police Report was explained by Police Inspector Rolly Marqueses. When he was recalled to the witness stand as a witness for the defense, he testified as follows:

Q [Atty. Inzon] Now Mr. Witness, if I may be allowed to read for the record, Your Honor please, Exhibit 23-A reads: “Initial investigation disclosed that a tumultuous affray resulting to death/serious physical injuries at Bgy. 48, Bagong Abre, Legazpi City involving Ascaño and Neptuno family.” Now, I'm interested in the word “tumultuous affray”, Mr. Witness. How did you come up with a conclusion that there was a tumultuos affray?

A Because there were three (3) or more persons involved in the quarrel.[36] (Underscoring Ours)

Meanwhile, accused-appellants point to the fact that the incident happened about four or five meters away from the front portion of the house of the Ascaños and eight to ten meters away from the house of the Neptunos. It is their view that they were the ones who were waylaid, while they were on their way to the house of accused-appellant Eddie.

In addition, accused-appellants likewise harp on the non-examination for fingerprints of the weapons which were recovered from the scene of the crime. They argue that had an examination of the weapons for fingerprints been made, it would be established that those weapons do not bear their fingerprints.

We are unpersuaded.

The incident may have happened near the house of the victims, and may have given the victims undue advantage over the Neptunos. But this will not change the fact that accused-appellants were positively identified to have authored the crimes.

Similarly, the fact that the weapons were not subjected to fingerprint examination is not fatal. In *People v. Sartagoda*,^[37] the Supreme Court rejected the theory of therein accused-appellants that since they have no

fingerprints impressed on the objects found on the scene of the crime, then they are not guilty of the crime charged. The Supreme Court explained:

The accused-appellants fault the trial court of ignoring the fingerprint examination report submitted by the Crime Laboratory of the PC/INP Camp Crame which stated that none of the specimen latent fingerprints were found to be positive. It is their contention that since their fingerprints were not found in the objects found in the scene of the crime they cannot be held guilty of the crime charged beyond reasonable doubt.

Although We agree with their opinion that a positive finding of matching fingerprints has great significance, We cannot sustain their theory that from the negative findings in the fingerprint examination conducted in the course of the investigation in the instant case, it must be concluded that they could not have been at the scene of the crime. Negative findings do not at all times lead to a valid conclusion for there may be logical explanations for the absence of identifiable latent prints other than their not being present at the scene of the crime.

Only latent fingerprints found on smooth surface are useful for purposes of comparison in a crime laboratory because prints left on rough surfaces result in dotted lines or broken lines instead of complete and continuous lines. Such kind of specimen cannot be relied upon in a fingerprint examination. The latent fingerprints are actually oily substances adhering to the surfaces of objects that come in contact with the fingers. By their very nature, oily substances easily spread such that when the fingers slide against the surface they touch, no identifiable latent print is left, only smudges instead. Not all police investigators are aware of the nature of latent fingerprints so as to be guided accordingly in deciding which objects to submit for fingerprint lifting and examination. Noting the interplay of many circumstances involved in the successful lifting and identification of proper latent fingerprints in a particular crime scene, the absence of one does not immediately eliminate the possibility that the accused-appellants could have been at the scene of the crime. They may be there yet they had not left any identifiable latent fingerprint. Besides, in the case at bar, only ten latent fingerprints are involved. The findings in this particular fingerprint examination are not sufficient to cast even just a reasonable doubt in their finding of guilt for the crime charged.

IN FINE, We find that the trial court imposed the proper penalties for homicide in both criminal cases. Hence, We affirm the same in its entirety.

WHEREFORE, the appeals of accused-appellants are DENIED. The Joint Decision dated October 15, 2012 of the Regional Trial Court, Branch 6, Legazpi City in Criminal Cases Nos. 11214 and 11215 is AFFIRMED.

SO ORDERED.

C E R T I F I C A T I O N

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.

Tijam, N.G., Chairperson and Baltazar-Padilla, P., JJ., concur.

[1] Marites Neptuno filed a Motion to Withdraw Appeal, which the Court granted in its Resolution dated January 29, 2014. (Rollo, pp. 183-187). Hence, this Decision only resolves the appeal of Eulogio and Eddie Neptuno.

[2] Rollo, pp. 72-118

[3] Criminal Case No. 11215 was originally raffled to Branch 1 of the Regional Trial Court, Legazpi City but was ordered consolidated with Criminal Case No. 11214. (See Order dated February 15, 2008, Records, Criminal Case

No. 11215, pp. 119-120.)

[4] Rollo, pp. 117-118

[5] The Information was amended since, upon inquest proceedings, Felisa was charged along with her husband Eulogio and children Marites and Eddie. After the preliminary investigation, however, the Office of the City Prosecutor ordered the dropping of her name. Felisa's name was likewise dropped in Criminal Case No. 11215

[6] Records, Criminal Case No. 11214, pp. 90-91

[7] Records, Criminal Case No. 11214, p. 90

[8] The charge was originally for Frustrated Murder. In view of the death of Edgar Ascano, Sr. on June 16, 2008, upon motion and hearing, the trial court allowed the prosecution to amend the Information.

[9] Records, Criminal Case No. 11215, p. 48

[10] Referring to Erlinda Ascaño

[11] Referring to Ricardo Ascaño

[12] Referring to Eulogio Neptuno

[13] Records, Criminal Case No. 11214, pp. 586-590

[14] Records, Criminal Case No. 11214, pp. 591-595

[15] Records, Criminal Case No. 11214, pp. 629-630

[16] Records, Criminal Case No. 11214, p.631

[17] Rollo, pp. 39-71

[18] Rollo, p. 56

[19] Rollo, pp. 183-187

[20] People v. Dagani, G.R. No. 153875, August 16, 2006

[21] Ibid.

[22] Gotis v. People, G.R. No. 157201, September 14, 2007

[23] The trial court did not cite authorities. In the case of People v. Narvaez, G.R. Nos. L-33466-67, April 20, 1983, Justice Abad Santos dissented from the majority and emphasized that “[t]he self-defense of the Revised Penal Code refers to unlawful aggression on persons, not property.” On the other hand, Justice Gutierrez, Jr. who likewise dissented expressed his view that:

“x x x. It is true that Art. 429, Civil Code of the Philippines, provides that the owner or legal possessor of a thing may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property. It seems to me, however, that an attack on the person defending his property is an indispensable element where an accused pleads self-defense but what is basically defended is only property.

Defense of property is not of such importance as the right to life and defense of property can only be invoked when it is coupled with some form of attack on the person of one entrusted with said property. The defense of property, whether complete or incomplete, to be available in prosecutions for murder or homicide must be

coupled with an attack by the one getting the property on the person defending it.

In the case now before Us, there is absolutely no evidence that an attack was attempted, much less made upon the person of appellant. The mere utterance "No, gademit, proceed, go ahead" is not the unlawful aggression which entitles appellant to the plea of self-defense. x x x"

[24] *People v. Vicente*, G.R. No. 137296, June 26, 2003

[25] *People v. Castellano*, G.R. No. 139412, April 2, 2003; *People v. Mendoza*, G.R. No. 133382, March 9, 2000

[26] *Cuison v. Court of Appeals*, G.R. No. 128540, April 15, 1998

[27] *Rollo*, p. 60

[28] *Ibid.*

[29] *Rollo*, pp. 106-107

[30] *Rollo*, pp. 60-61

[31] *Records*, Criminal Case No.11214, p. 483. It was marked as Exhibit "D" for the Prosecution and Exhibit "23" for the defense. The pertinent portion of the Report (marked as Exhibit "23-A") reads in part:

Initial investigation disclosed that a tumultuous affray resulting to death/serious physical injuries at Bgy. 48, Bagong Abre, Legazpi City involving Ascaño and Neptuno famil[ies] wherein previously there [was] a drinking session in front of the Sari-sari Store of Ascaño family[,] thereafter stoning incident occurred and suddenly they mauled the victim Edgar Ascaño Jr. y Baola, 27 years old, married of P-2, Bgy. 48, Bagong Abre, Legazpi City, which was pronounced dead on arrival at Aquinas University Hospital this City and the father of the victim Edgar Ascaño Sr. y Asores, 49 years old, married of same address was also transferred to BRTTH for medical treatment with stabbed wounds on serious conditions and allegedly stroked by hard object, that they were both neighbors residing at P-2 of above-mentioned barangay. Accordingly[,] suspect Eddie Neptuno y Apuyan, 36 years old, married, of same place dragged the victim with stabbed [wounds] and Edgar Ascaño Sr. had also injuries and was able to help his son, whereas, there and then he was hit by a meter of bamboo ("marurugi") by Marites Neptuno y Apuyan (T-bird/tomboy), 26 years old, single of said address and with the aide Eloyo Neptuno y Abejuro and mauling the victim, as witness[ed] by Jun-Jun Ascaño y Fernando.

x x x

[32] *People v. Julianda, Jr.*, G.R. No. 128886, November 23, 2001; *People v. Dalabajan*, G.R. No. 105668, October 16, 1997; *Sison v. People*, G.R. Nos. 108280-83, November 16, 1995

[33] G.R. No. L-36234, February 10, 1981

[34] See *People v. Dalabajan*, G.R. No. 105668, October 16, 1997

[35] See Note 31

[36] *TSN*, June 15, 2011, p. 25

[37] G.R. No. 97525, April 7, 1993

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