

MARIANO DE LUNA Y ROLDAN, PETITIONER, VS. THE HON. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. No. 111484. June 02, 1995*

Ponente: VITUG, J.

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Petitioner Mariano De Luna y Roldan received a verdict of guilt from the Regional Trial Court, later sustained by the Court of Appeals, for the killing of Demetrio Rodelas. The trial court[1] imposed upon De Luna the indeterminate penalty of "FOUR (4) YEARS, TWO (2) MONTHS x x x to EIGHT (8) YEARS and ONE (1) DAY (prision correccional medium to prision mayor minimum)"[2] after appreciating in his favor the privileged mitigating circumstance of incomplete self-defense. The appellate court[3] disagreed on the range of the penalty, holding that De Luna was not entitled to the privileged mitigating circumstance; hence, it decreed an indeterminate sentence of "SIX (6) years and ONE (1) day of prision mayor, as minimum, to SEVENTEEN (17) years and FOUR (4) months of reclusion temporal, as maximum." [4]

Contesting both his conviction and the sentence pronounced by the appellate court, De Luna has come to us via this petition for review on certiorari.

De Luna was accused of, and charged with, the crime of murder for the death, on 12 April 1982, of Demetrio Rodelas at Barangay Hupi, Municipality of Sta. Cruz, Marinduque. When arraigned, on 15 March 1985, De Luna pleaded "not guilty."

The appellate court summarized the evidence adduced by the prosecution and the defense thusly:

"The prosecution evidence consisted mainly of the testimonies of Sergio Tagbago and Dr. Thelma Principe. Tagbago's testimony is as follows:

"At 7:00 o'clock in the evening of April 12, 1982, while the witness Sergio Tagbago was in the balcony of his house at Barangay Hupi, Sta. Cruz, Marinduque, relaxing with his wife and daughter, who were playing sungka, Demetrio Rodelas arrived for a chat. (Rodelas was the son-in-law of Nemesio Piramide, who is Tagbago's brother-in-law. Nemesio Piramide is the brother of Tagbago's wife Estrella.) In a moment, they heard someone calling out, 'Hudas, lumabas ka diyan, ninakaw mo ang manok ko' ('Judas, come out and fight. You stole my gamecock'). The one who shouted was about 70 meters away. Sergio recognized him to be Mariano de Luna. Afterward Demetrio Rodelas decided to go home and bade goodbye to Sergio and his family. (TSN, pp. 2-7, April 24, 1984; Id., pp. 8-16, Nov. 7, 1984) But as he was about to step out of the gate, Demetrio was met by accused Mariano de Luna who stabbed him (Demetrio) on the upper left side of the right thigh with a bladed weapon. At that moment, Demetrio was lifting his right leg over a foot-high hurdle (tarangkahan) at the gate. Demetrio managed to take a few steps backward and then fell on the ground by the wall. His assailant fled immediately. (TSN, pp. 8-11, April 24, 1984; Id., p. 18, Nov. 7, 1984; Id., pp. 2-11, Mar. 7, 1985; Id., pp. 2-7, July 25, 1985).

"Demetrio was taken to the Sta. Cruz Hospital where he was treated by the resident Physician, Dr. Thelma Principe. He died at around 10:30 o'clock of the same night. According to the medical certificate of Dr.

Principe, Demetrio Rodelas suffered the following wounds:

- Stab Wound 1 1/2 inches long x 1/4 wide x 2 1/2 inches deep directed upwards severing the subcutaneous tissues, muscles, and femoral vein active bleeding.
- Contusion with Hematoma 1 1/2 inches in diameter associated with severe pain and tenderness.

"The following day Sergio Tagbago reported the incident to the police.

"The next witness of the prosecution was Dr. Thelma Principe who testified that the contusions on the back of the victim must have been caused by the fall while the stab wound on the left thigh must have been inflicted while his legs were apart. (Annex 1-A and 1- B)

"Mariano De Luna denied the accusation against him. He claimed that on April 12, 1982, at around 8:30 in the evening, while he was passing by the house of Sergio Tagbago, on his way to work at the Marcopper Mining, he heard someone say, 'Nariyan na' ('Here he comes') and then he was hit on the side. He saw Demetrio Rodelas with a bladed weapon in his right hand who confronted him, 'Mariano, talagang papatayin ka namin.' ('Mariano, we are really going to kill you') According to the accused-appellant, Demetrio tried to stab him but he was able to parry the blow. They then grappled for possession of the weapon. While they were fighting, Andres Rodelas struck him with a piece of wood, hitting him on the left knee. He claimed that he fell but that he was able to wrest the weapon from Demetrio. The accused did not say how Demetrio was wounded. Instead, he said, Demetrio ran towards the house of Tagbago. (TSN, pp. 4-17, May 28, 1987; Id., pp. 4-10, Jan. 28, 1988).

"The accused said he ran home and told his wife about the incident. Later, a policeman arrived and took him to the station for questioning. Accused-appellant turned over the fatal weapon to the police but refused to give any statement. He was later taken to the Sta. Cruz Hospital where he was treated by Dr. Principe. (TSN, pp. 18-22, May 28, 1987; Id., pp. 3-6, Oct. 7, 1987; Id., pp. 11-13, Jan. 28, 1988) He claimed that he wanted to file charges against Andres Rodelas but was told that since it had been three months since the incident occurred, the crime had already prescribed. (TSN, pp. 14-16, Jan. 28, 1988)

"Mariano de Luna said that Demetrio Rodelas had a grudge against him because the year before, in 1981, he (De Luna) had filed charges against Demetrio for the destruction of his two gamecocks and for attempting to hit him and burn his house. Rodelas filed a counter charge against him for wounding him on the left side of the head. According to De Luna, although the cases were settled and dismissed, Demetrio told others that he would someday take revenge. (TSN, pp. 4-9, July 21, 1988)

"The defense also presented Dr. Thelma Principe, the resident physician on duty at the Sta. Cruz Hospital on April 12, 1982. Her testimony is summarized in the following portion of the decision of the trial court.

"[O]n April 12, 1982 she was on duty at around 9:30 when patient Mariano De Luna arrived and found on him - (1) abrasion with contusion, 1/2 inch in diameter superficial anterior chest wall; (2) contusion with pain located at the left lateral aspect of the left knee caused by the use of a blunt instrument. They cleaned them and applied dressing and antiseptic by I.M.; 2 oral medicines, one antibiotic and one anti-inflammatory. She identified Exh. 2 marked by the court as Exh. X and X-1 with the explanation that the two medical certificates were issued for purposes of sick leave to be filed with Marcopper.

"She explained that Exh. 2 was prepared by the nursing attendant and then by herself. The findings on the document were her handwriting including the date '4-12-82', the date of issuance was an error - pointing to Exh. 2-A. Clarifying the notation in Exh. 2 and Exh. 2-A where it stated that Mariano De Luna was treated from April 19, 1982 to April 26, 1982 - she stated that the medical certificate was issued only for purposes of sick leave. The second one - April 27 to 30 was because the patient Mariano de Luna extended his leave as he was still recuperating from his injuries. The writing of the dates 'April 19 to 26' is only for the purpose of securing sick leave." [5]

The Regional Trial Court and the Court of Appeals both found De Luna guilty beyond reasonable doubt of homicide; however, their findings differed on the applicability to the case of the privileged mitigating circumstance of incomplete self-defense which, according to the appellate court, was incorrectly considered by the trial court. The appellate court, likewise, increased the indemnity to the heirs of Rodelas from P30,000.00 to P50,000.00.

In his petition, De Luna prays for his acquittal or, in the alternative, that he should be credited with the privileged mitigating circumstance of incomplete self-defense and be sentenced to an indeterminate prison term of only four (4) months and one (1) day of arresto mayor to four (4) years and two (2) months of prision correccional.[6]

The Court need not belabor the fact that the accused-appellant did take the life of his victim. There is more than enough evidentiary basis to sustain the findings of both the trial court and the appellate court on the commission of the crime and the guilt of appellant. Instead, our review will focus, by and large, on whether the privileged mitigating circumstance of incomplete self-defense, favorably considered by the trial court but rejected by the appellate court, should be appreciated in favor of appellant.

Article 11, paragraph 1, of the Revised Penal Code provides:

"Art. 11. Justifying circumstance. - The following do not incur any criminal liability:

"1. Any one 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."

When the foregoing requisites concur, there can be a legitimate claim of self-defense and no criminal liability attaches. Where, upon the other hand, only one or two but not all three of the above requisites essential to justify the act or to exempt one from criminal liability are attendant (termed "incomplete self-defense"), the accused still incurs, albeit entitled to a mitigation of, criminal liability. We did repeatedly say before that, whether complete or incomplete, self-defense, by its very nature and essence, always would require the attendance of unlawful aggression initiated by the victim which must clearly be shown.[7] When unlawful aggression on the victim's part is alone established, incomplete self-defense is so appreciated merely as an ordinary mitigating circumstance under Article 13, paragraph 1,[8] of the Code. When such unlawful aggression is coupled with still another element of self-defense, incomplete self-defense becomes a privileged mitigating circumstance, referred to in Article 69[9] of the Revised Penal Code, that entitles the accused to a reduction of the penalty imposed by law for the felony by one or two degrees depending on the conditions and circumstances therein obtaining.[10]

The trial court has rationalized that the deceased must have been the unlawful aggressor because of the prosecution's failure to present Policeman Dionisio Ricaplaza (who would appear to have fetched and accompanied De Luna to the hospital for treatment) in order to discredit De Luna's claim of having first been hit by the victim with a hard object below the left nipple. We agree with the appellate court that the eyewitness account of Tagbago on the incident is sufficient to belie appellant's allegation. Below is a portion of Tagbago's testimony:

"Q

So you want to impress the Honorable Court that Demetrio stayed also in the balcony where he, according to you watched the sungka playing by your wife and daughter?

"A

Yes, sir.

"Q

And while you and Demetrio as well as your wife and daughter were in the balcony, do you remember of any unusual incident that happened?

"A

Yes, sir, there was.

"Q

What was that unusual incident?

"A

Somebody shouted, sir.

"Q

Do you still remember what was shouted?

"A

Yes, sir.

"A

'Judas, lumabas ka diyan, ninakaw mo ang manok ko.'

"Q

Did you recognize the person who shouted those words?

"A

Yes, sir.

"Q

Who shouted those words?

"A

Mariano de Luna, sir.

"Q

Why could you tell that it was Mariano who shouted those words?

"A

I know his voice, sir, because I am from Hupi and he is also from Hupi.

"Q

How many times did Mariano shout those words?

"A

Once only, sir, in front of the house.

"Q

Was there any second shouting at any place?

"A

First, sir, he shouted near their house, the house of the accused and the second time was in front of our house.

"Q

How far is the house of Mariano de Luna to your house?

"A

More or less, 70 meters, sir.

"Q

So you want to improve (sic) the Hon. Court that the first time you heard the shout: Judas, lumabas ka diyan... was near the house of the accused, and the second time that you heard the shout was when he was in front of your house, is that correct?

"A

Yes, sir.

"Q

Now, is it not a fact that your house is fronted by a bamboo fence?

"A

Yes, sir.

"Q

And fronting your bamboo fence is a road?

"A

Yes, sir.

"Q

How far is the bamboo fence fronting your house to the side of your house facing the bamboo fence?

"A

More or less, 2 and 1/2 meters.

"Q

And after you heard the second shout, what happened?

"A

There was silence.

"Q

And after the silence, what did Demetrio do?

"A

He bade goodbye and he said he will go home.

"Q

Was Demetrio able to go home?

"A

No, sir.

"Q

Why was Demetrio not able to go home?

"A

Because he was stabbed by Mariano, sir.

"Q

By Mariano, you are referring to Mariano de Luna whom you identified while ago inside the courtroom?

"A

Yes, sir.

"Q

Where was Demetrio when he was stabbed by Mariano?

"A

He was at the gate of the door of our fence.

"Q

What was Demetrio exactly doing by the door of your fence when he was stabbed by Mariano?

"A

He was going out, sir.

"Q

Will you please demonstrate to the Honorable Court the exact position of Demetrio when he was stabbed by Mariano?

"A

He opened the door and then he stepped his right foot forward (witness demonstrates).

"Q

What is the height of your gate?

"A

More or less 5 foot, sir.

"xxx xxx xxx

"Q

Now, if you have to come from the house you have to go out of that door of your fence, do you have to pass this what we call 'tarangkahan'?

"A

Yes, sir.

"Q

How high is your tarangkahan from the ground?

"A

Less than a foot.

"xxx xxx xxx

"Q

How about the height of the fence, how high is it?

"A

More or less, 5 meters high.

"Q

And what happened while Demetrio was already at the door or gate?

"A

Mariano suddenly appeared.

"Q

And what did he do upon his sudden appearance?

"A

He suddenly stabbed Demetrio.

"Q

How many times did you see Mariano stab Demetrio?

"A

Only once, sir.

"Q

Will you please get out of the witness stand again and demonstrate to the Hon. Court how you saw Mariano stabbed Demetrio?

"A

Mariano suddenly appeared from the side of the fence and suddenly stabbed Demetrio.

"FISCAL NARITO:

"The witness in an upward thrust with the right arm (describing demonstration of witness)

"Q

You demonstrated awhile ago that Mariano suddenly appeared and then suddenly stabbed Demetrio with your demonstrating with your right arm on an upward thrust, with what hand did Mariano stab Demetrio?

"A

What I saw, sir, is that Mariano's right hand.

"Q

According to you Mariano stabbed Demetrio only once, and after Mariano had stabbed Demetrio, what did Mariano do?

"A

He moved backward to the road, sir.

"Q

How about Demetrio, after he was stabbed once, what did he do?

"A

He moved backward then he fell."[11]

The defense would rather that Tagbago be discredited allegedly because of "glaring" inconsistencies in his testimony. Not only have the supposed inconsistencies been sufficiently explained by the appellate court but that, indeed, they concern less than significant details that do not detract from the credibility of Tagbago and credulity of his eyewitness account. The appellate court, scrutinizing the case closely has aptly observed:

"Although accused-appellant studiously avoided admitting that he had stabbed the victim, it is clear that he inflicted the mortal wound on Demetrio Rodelas. The eyewitness account of Sergio Tagbago clearly shows that accused-appellant stabbed the victim. Tagbago said he heard defendant-appellant shout angry words at the victim. He later saw accused-appellant stab Rodelas. Although the defense tried hard to show that Tagbago did not see the incident happen, accused-appellant's admission that the incident happened in front of Tagbago's house makes it more probable that Tagbago really witnessed the stabbing of Demetrio.

"Tagbago's testimony was not given credit by the trial court because of what it considered glaring inconsistencies and improbabilities. The trial court said:

"It appeared from Tagbago's oral testimony on direct examination that he was at his balcony when Mariano de Luna stabbed Demetrio Rodelas and went inside only after the latter's fall.

'On cross examination, however, he admitted that he was inside his house when Mariano de Luna suddenly appeared and delivered the stabbing blow.'

"There is no inconsistency here. Tagbago testified on cross-examination that he was about an arm's length from the place where his wife and daughter were playing 'sungka' in the balcony. (TSN, pp. 14-16, November 7, 1984) Hence, as he testified on direct-examination, he was near the balcony at the time of the incident.

"The trial court further said:

"`On one occasion, Tagbago relayed that Mariano de Luna stabbed Demetrio Rodelas while at a distance of

five (5) feet. In his demonstration however he showed that Mariano de Luna with the use of his right hand made an upward thrust of the bladed weapon hitting the left side of Demetrio Rodelas' right upper leg. If it is so, then a fully stretched right arm which is more or less three (3) feet will not reach the body of the victim. More so when in this case, prosecution did not establish that Mariano de Luna's hand was fully stretched forward when the bladed instrument about eight (8) inches hit Demetrio Rodelas' right thigh.'

"As the Solicitor General states in his brief for the appellee:

"This is explicable. In the first place, the approximate distance of about five (5) feet is still possible. It finds support in the testimony of witness Tagbago who claimed that the victim was standing and in the act of lifting his right foot over the one-foot high bamboo gate (tarangkahan) when he was stabbed by appellant who made an upward thrust of his right arm and then hitting the upper thigh. In other words, the victim's legs were not only apart from each other but the right leg was raised upward at the time of the attack.

'Be that as it may, it can not be expected of witness Tagbago to recollect with precision the actual measurement considering the manner, place and time the stabbing incident occurred. What is important is that Tagbago's demonstration by making an upward thrust of his right arm and hitting with a bladed weapon the left side of the victim's right upper leg was corroborated both by the physical evidence showing the fatal wound sustained and the testimony of the attending physician.

'(Appellee's Brief, pp. 23-24)'

"Finally, it was pointed out:

"In his direct testimony, Tagbago portrayed that Demetrio Rodelas made a step backward from the gate (tarangkahan) then fell. when confronted, however, with his affidavit, he admitted that Demetrio Rodelas was able to run and fell at his balisbisan. The conclusion therefore should be that Demetrio Rodelas came from a distance farther than the tarangkahan. Since the tarangkahan is only 2-1/2 meters away from the balisbisan. Only two (2) full stretched steps would be necessary to reach the point where Demetrio Rodelas fell and not as what was stated in Tagbago's affidavit (he ran and fell).'

"But again, as the Solicitor General argues:

"There is no basis for the conclusion that when the victim ran backward after having been stabbed by the appellant, he came from a distance farther than the gate (tarangkahan). The word run simply means to move swiftly, make haste or rush. Hence, the emphasis is not on the distance travelled but on the manner of movement. Thus, the victim, after having been attacked, was able to move swiftly reaching the wall by the side of the house (balisbisan) before he fell (pp. 6-7, TSN, July 25, 1985). Had the victim come from a place farther from the gate as appellant wishes to point out, it would not be possible for the former to even reach the side of the house considering that the wound inflicted was fatal. The most logical conclusion, therefore, should have been that the victim was stabbed while lifting his right foot over the one-foot high bamboo gate (tarangkahan). After being stabbed, he must have withdrawn his right foot from over the tarangkahan, then turned around and instinctively moved swiftly or ran back to the house of Tagbago but fell upon reaching the balisbisan, the place on the ground below the house awning.'

"Indeed, what cannot altogether be disregarded is the fact that Tagbago saw and heard the incident - in short he witnessed it. There is no question that when the first shout was heard he was in the balcony of his house, with his family and the victim Demetrio. It was accused-appellant challenging Demetrio to a fight. Later accused-appellant himself confirmed what Tagbago said he had heard the accused-appellant say when the latter said bad blood existed between him and the deceased and he had in fact held him responsible for the death of his gamecocks.

"Moreover, as pointed out by the Solicitor General, there is no question either that Tagbago was in a position to see the incident because there was no obstruction; the wall of the balcony was no higher than the height of the

waistline and there was an open space between the window sill and the roofing.

"Indeed, the inconsistencies pointed out by the trial court concern minor matters which do not detract from the credibility of Tagbago as a witness. This credibility of the witnesses is not affected by the fact that the deceased was the son-in-law of his brother-in-law. In the ultimate analysis, his testimony must be appraised on its merits and, as already pointed out, nothing that the accused-appellant has said shows that Tagbago's testimony is unworthy of belief." [12]

There is no cogent reason for us to disturb the above findings of the appellate court.

WHEREFORE, judgment is hereby rendered DISMISSING the instant appeal and AFFIRMING in toto the decision appealed from. Costs against appellant.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Francisco, JJ., concur.

[1] Per Judge Romulo Lopez.

[2] Rollo, p. 77.

[3] Penned by then Court of Appeals, now Supreme Court, Justice Vicente V. Mendoza, with the concurrence of Justices Minerva Gonzaga-Reyes and Pacita Canizares-Nye.

[4] Rollo, p. 66.

[5] Rollo, pp. 56-60.

[6] Rollo, p. 52.

[7] People vs. Delgado, 182 SCRA 343; People vs. Cañete, 175 SCRA 111; People vs. Agapinay, 186 SCRA 812; United States vs. Carrero, 9 Phil. 544.

[8] But see People vs. Cabellon, 51 Phil. 846.

[9] ART. 69. Penalty to be imposed when the crime committed is not wholly excusable. - A penalty lower by one or two degrees than that prescribed by law shall be imposed If the deed is not wholly excusable by reason of the lack of some of the conditions required to justify the same or to exempt from criminal liability In the several cases mentioned in Article 11 and 12, provided that the majority of such conditions be present. The courts shall impose the penalty in the period which may be deemed proper, in view of the number and nature of the conditions of exemption present or lacking.

[10] Luis B. Reyes. Revised Penal Code, Book I, 1993 edition.

[11] Rollo, pp. 96-100.

[12] Rollo, pp. 61-65.

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