PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILSON GUTUAL Y REMOLLENA AND JOAQUIN NADERA Y APOSTOL, ACCUSED. WILSON GUTUAL Y REMOLLENA, ACCUSED-APPELLANT.

G.R. No. 115233. February 22, 1996

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

On 26 June 1991, an information[1] was filed with the Regional Trial Court (RTC) of Tagum, Davao del Norte, Branch 1, charging Wilson Gutual and Joaquin Nadera with the crime of murder (Criminal Case No. 7851). The accusatory portion thereof read:

> That on or about December 29, 1990, in the Municipality of San Vicente, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with one another, with treachery and evident premeditation, with intent to kill, armed with [a] garand rifle and [an] M14 rifle, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Celestino Maglinte, thereby inflicting upon him wounds which caused his death, and further causing actual, moral and compensatory damages to the heirs of the victim.
>
> Contrary to law.

The accused, members of the Civilian Armed Forces Geographic Unit (CAFGU) in the Municipality of San Vicente, Davao,[2] pleaded not guilty on arraignment.[3] Thereafter, trial on the merits ensued.

Judge Marcial Fernandez received the testimonies of all the witnesses except that of the surrebuttal witness, which was received by his successor, Judge Bernardo V. Saludares.4

At trial, the prosecution presented six witnesses, five of whom were related to the victim by affinity. The defense, in turn, presented nine witnesses, including the two accused and two barangay council officers. As might be expected, the prosecution and defense had conflicting versions of the event.

According to the prosecution, on 29 December 1990, at around 1:30 p.m., the victim Celestino Maglinte was walking along the barangay road of Belmonte in San Vicente, Davao, carrying his four-year old child. The victim had just come from his farm and had a bolo with him, which was placed in its scabbard. Maglinte was then surprised by the sound of an exploding firecracker; thus, he left his child by the road and ran towards the store of Barangay Captain Wayne Gutual, calling to the latter, who did not, however, come out of the store. Maglinte headed for the nearby basketball court, apparently still searching for the Barangay Captain. All the while the bolo remained in its scabbard. Suddenly, accused Wilson Gutual and Joaquin Nadera appeared, armed with a Garand rifle and an M-14 rifle, respectively. Gutual fired around three warning shots into the air and Maglinte dropped to the ground. Gutual then went near Maglinte and shouted "surrender," thus Maglinte raised his right arm as a sign of submission. At that time, Gutual fired some five shots at Maglinte. Although already injured, Maglinte managed to stand. Thus, Gutual and Nadera fired again, and the victim toppled over, mortally wounded. Gutual and Nadera left the scene at once. Immediately the following morning, the victim was buried upon the Barangay

Captain's order.[5]

The defense claims that the killing was committed in self-defense or defense of a relative or stranger. It tried to prove that on the aforementioned date and time, the victim was running amuck or berserk,[6] chasing Barangay Captain Wayne Gutual in front of the latter's house. Drawn by shouts for help from onlookers, accused Gutual and Nadera rushed to the scene, with Gutual firing warning shots into the air. Maglinte stopped pursuing the barangay captain, turned towards the accused, then started approaching them. Although Gutual continued to fire warning shots, Maglinte kept walking towards him, while Gutual kept retreating to put some distance between him and the victim. The two moved some ten meters, crossed the road in front of the barangay captain's house, and ended up near the barangay hall. Finally, Gutual was pinned against the staircase of the barangay hall. Maglinte was now about one to three meters from Gutual and pressing on, unceasingly hacking away at Gutual, who, however, managed to evade the blows. Nadera fired warning shots into the air, but Maglinte continued his attack. Gutual then fired at the victim's hand to disarm him, but unfortunately the bullet pierced Maglinte's bolo-wielding arm, went through his chest, and came out his back.

Gutual and Nadera were arrested on 29 January 1991.[7] Nearly two months after the killing, some 200 residents of Barangay Belmonte held a rally in front of the police station to demand the release of the two accused.[8] The rallyists brought with them a "manifesto"[9] signed by barangay council officials and members which stated, among other matters, that they knew Celestino Maglinte to be a dangerous person and that the accused fired at the victim only after knowing that he would be killed by the latter.

On 2 January 1994, the trial court, per Judge Saludares, promulgated its decision[10] acquitting Nadera but convicting Gutual. The dispositive portion of the decision read:

> WHEREFORE, premises considered, this Court finds the accused Wilson Gutual y Remollena, 43 years of age, married, and a resident of Belmonte, San Vicente, Davao, farmer by occupation, guilty beyond reasonable doubt of the crime of Murder as penalized under Article 248 of the Revised Penal Code, as charged in the information, and is therefore hereby sentenced to suffer the penalty of reclusion perpetua, with all the accessory penalties provided by law, and jointly and severally with his co-accused Joaquin Nadera y Apostol, 42 years of age, married and a resident of Belmonte, San Vicente, Davao, and a farmer by occupation, who is hereby acquitted of the criminal charge on the ground of reasonable doubt, is/are hereby ordered to indemnify the widow, Virginia Ayendo Vda. de Maglinte, and heirs of the victim, Celestino Maglinte, in the amount of Fifty Thousand (P50,000.00) Pesos by way of compensatory damages for such death, Twenty Thousand (P20,000.00) Pesos by way of moral damages, Ten Thousand (P10,000.00) Pesos by way of exemplary damages, and Five Thousand (P5,000.00) Pesos as funeral and burial expenses.[11]

Gutual (hereinafter, accused-appellant) seasonably appealed from the decision and alleges that the lower court committed the following errors:

> I
>
> ...IN FINDING BEYOND REASONABLE DOUBT ACCUSED WILSON GUTUAL GUILTY FOR MURDER AND IN IMPOSING CIVIL LIABILITY ON ACCUSED JOAQUIN NADERA.
>
> II
>
> ...IN NOT ACQUITTING ACCUSED WILSON GUTUAL ON GROUNDS OF EITHER SELF-DEFENSE OR DEFENSE OF A RELATIVE, OR IN NOT CONSIDERING IN FAVOR OF ACCUSED WILSON GUTUAL [THE] INCOMPLETE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE OR DEFENSE OF [A] STRANGER.
>
> III

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> ...IN IMPOSING CIVIL LIABILITY ON ACCUSED JOAQUIN NADERA INSPITE OF HIS ACQUITTAL.
>
> IV
>
> ...IN NOT HOLDING THAT SELF-DEFENSE OR DEFENSE OF [A] RELATIVE HAS BEEN PROVEN BY EVIDENCE SUFFICIENTLY ENOUGH TO MEET THE REQUIREMENTS OF MORAL CERTAINTY.[12]

These assigned errors may be reduced to two issues:

> I. Whether or not Joaquin Nadera should be held civilly liable despite his acquittal; and
>
> II. Whether or not Wilson Gutual has sufficiently proved self-defense or defense of a relative or of a stranger, or, at the very least, the incomplete justifying circumstance of self-defense or defense of a stranger.

In the alternative, the accused-appellant contends that should he be convicted of any crime, it should be of homicide only, as the prosecution failed to prove the qualifying circumstances of treachery and evident premeditation.[13] Moreover, the mitigating circumstance of incomplete self-defense or defense of a relative should be considered in the imposition of the penalty.[14]

As to the first issue, the Office of the Solicitor General correctly points out that the "[a]ppellant lacks the standing to question the court’s decision as it is Nadera who is affected thereby," and Nadera did not appeal from the said decision[15] Section 11(a), Rule 122 of the Rules of Court provides that an appeal taken by one or more of several accused shall not affect those who did not join in the appeal.

The second issue involves a question of fact.

Since the judge who penned the questioned decision, Judge Saludares, heard only one of the witnesses and only at the surrebuttal stage, the respect ordinarily accorded the trial court’s findings of fact does not apply in this instance.[16] We are thus compelled to sift through the transcripts of the stenographic notes of the testimonies of the witnesses.

After a painstaking evaluation of the evidence, we find the version of the prosecution unworthy of credence. First, it is scarcely believable for the victim who was already thirty-two years of age to be "afraid of’ the mere sound of an exploding firecracker, as the prosecution witness intimated.[17] New Year’s Day was then only two days away, such that people, even those in the provinces, were already accustomed to hearing such sound.

Second, it likewise seems unusual for the victim to leave his four-year old daughter by the road;[18] if he was really afraid of the sound of a firecracker, he would have probably thought that his child likewise was, and should have therefore put her in a safe place before searching for the barangay captain.

Third, if the deceased’s bolo was indeed in its scabbard, there was no reason then for the two accused to fire three warning shots into the air. Having allegedly laid flat on the ground with his right arm raised,[19] the victim posed no threat to the accused as would prompt the latter to fire at him. Besides, it was only around half past one o’clock in the afternoon, and a lot of people were in the vicinity.[20]

Fourth, if it were true that what transpired was a cold-blooded murder, the family or relatives of the victim would have insisted that the victim’s corpse be autopsied. Instead, they buried him immediately the following morning.[21]

Finally, the Death Certificate dated 17 January 1991[22] belies the testimonies of the prosecution witnesses that the accused was shot several times.[23] Although the doctor who signed the death certificate did not actually examine the victim’s corpse, the entry regarding the cause of the victim’s death, i.e., "Hypovolemia secondary to

gunshot wound, anterior chest, R forearm per informant's report," may be deemed conclusive, since it was admittedly supplied by a relative of the deceased. Esmeraldo Mifloza, a first cousin of the victim's wife, whose name and signature appears in the said certificate as the informant, was presented by the defense as a hostile witness. He admitted to having signed the certificate on behalf of Mrs. Virginia Maglinte, the victim's wife.[24] He, however, stated that the ones who gave the information regarding the injuries sustained by the victim were the witnesses themselves, namely, "Eutiquio Iyana and Jose de Leon, the one who cleaned up the wounds of victim Celestino Maglinte and some BHW [Barangay Health Workers] of Barangay Belmonte."[25]

At the rebuttal stage, Eutiquio Iyana, the husband of a first cousin of Mrs. Maglinte, admitted to having given the doctor the information anent the wounds suffered by the victim and seen the doctor write down the said information.[26] In fact, the victim's wife was concededly present when the doctor filled up and signed the death certificate, and she was even the one who secured that document.[27] If the entry made by the doctor was different from what the informant reported, then it should have been questioned right then and there by either Mr. Iyana or Mrs. Maglinte.

At any rate, since the accused-appellant owned up to killing the victim, the burden of evidence shifted to him. He must then show by clear and convincing evidence that he indeed acted in self-defense or in defense of a relative or a stranger. For that purpose, he must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence.[28]

As correctly posited by the Appellee, the defense of a relative or a stranger is unavailing in this case. The accused-appellant shot the victim while the latter, after having stopped chasing the barangay captain, was approaching the former. At that instance then, the barangay captain's life was no longer in danger as the accused-appellant admitted. Thus, on questions proposed by the court, the accused-appellant responded:

> Q
>
> When Maglinte was chasing the barangay captain, you said that you were concentrating on him alone. Is that correct?
>
> A
>
> I was looking at Maglinte and I ordered him to stop, Your Honor.
>
> Q
>
> What were the exact words you used?
>
> A
>
> I told him "Pare, stop. Do not bring a bolo with you because the people are afraid of you."
>
> Q
>
> Did Maglinte obey you?
>
> A
>
> No, Your Honor. He did not speak and he did not put down the bolo.
>
> Q
>
> What did he do after you cautioned him or warned him?
>
> A

After he stopped, he faced me and he slowly went towards me.

Q

So, he discontinued chasing the barangay captain?

A

Yes. He discontinued chasing the barangay captain and he slowly went towards me, Your Honor.

Q

At that time, the barangay captain's life was no longer in danger?

A

Yes, because he already ceased chasing him.

Q

And you insisted he approached you. Did Maglinte approach you?

A

Yes, while he was going towards me, I was also stepping backward.

Q

Did you warn him while he was chasing you?

A

When he was slowly going towards me, I fired a warning shot, Your Honor.[29] (italics supplied)

Clearly then, what might have been unlawful aggression on the part of the victim against the barangay captain had ceased, and there was nothing more to prevent or repel. Hence, the second requisite of the defense of a relative or a stranger under Article 11 of the Revised Penal Code, viz., reasonable necessity of the means employed to prevent or repel the unlawful aggression, cannot be present.

Consequently, the accused-appellant has to rely solely on the justifying circumstance of self-defense.

The requisites of self-defense are: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[30]

It was sufficiently established that the unlawful aggression came from the victim. Indeed, since he was running amuck, he did not care anymore whom to attack or whether the person to be attacked was unarmed or armed with a high-powered rifle. Significantly, the entry in the Death Certificate corroborates the theory of the defense that the victim was in the act of hacking the accused-appellant when the latter "shot deceased's right hand for the purpose only of throwing the bolo out of his hand, but the bullet pierced through and hit the deceased's breast."[31]

There can be, as well, no doubt in the mind of the Court that there was lack of sufficient provocation on the part of the accused-appellant.

Whether the means employed by the accused-appellant were reasonable depends on the circumstances of this case.

The trial court observed that a bolo-wielder did not stand a chance against a CAFGU member "trained in the art of

self-defense and close-in fighting [and] armed with a Garand rifle."[32] As observed by the trial court, the accused-appellant

> [C]ould just have easily parried the alleged bolo-hacking of Celestino Maglinte, if ever such version was true, with the use of his Garand Rifle, and could have applied close fighting techniques which he was trained to do as a CAFGU member, and disarm Maglinte of his bolo instead of shooting the victim.[33]

It has, however, been duly established that the victim had a predilection for violence.[34] Barangay Captain Wayne Gutual testified that on at least three previous occasions, he had disarmed the victim:

> Q
>
> Now, Mr. witness, may we know from you if you know the reason why the deceased Celestino Maglinte would take your life?
>
> A
>
> Regarding Celestino Maglinte, we have no grudge with each other. But because I am the barangay captain, there were times that his wife Virginia will not yield to carnal relation, that is why he would be violent and threaten her with bolo. That is why I disarmed him three times already.
>
> xxx
>
> Q
>
> What did you disarm from Celestino?
>
> A
>
> First, I was able to disarm him with hunting knife; second with bolo; and third with a piece of hard wood.[35]

The accused-appellant became the target of the victim's violent nature when, after the victim stopped chasing the barangay captain, he turned to and vented his ire against the accused-appellant. The victim menacingly walked towards the latter who, in turn, kept walking backwards until he was pinned against the staircase of the barangay hall. At that point, the victim unceasingly hacked away at the accused-appellant and continued to move closer to him. When the victim was then only one meter away, he raised the bolo, ready to strike the accused-appellant.

Plainly, the accused-appellant could no longer retreat from the continuing assault by the victim who, as inexorably shown by his relentless advance towards the accused-appellant, was poised to kill the latter. The danger to the accused-appellant's life was clearly imminent. It would not then be proper nor reasonable to claim that he should have fled or selected a less deadly weapon, because in the emergency in which, without any reason whatever, he was placed, there was nothing more natural than to use the weapon he had to defend himself. In the natural order of things, following the instinct of self-preservation, he was compelled to resort to a proper defense.[36] It is settled that reasonable necessity of the means employed does not imply material commensurability between the means of attack and defense. What the law requires is rational equivalence, in the consideration of which will enter the principal factors the emergency, the imminent danger to which the person attacked is exposed, and the instinct, more than the reason, that moves or impels the defense, and the proportionateness thereof does not depend upon the harm done, but rests upon the imminent danger of such injury.[37]

The accused-appellant has convincingly and sufficiently shown that he killed the victim in the legitimate exercise of self-defense, a justifying circumstance. Pursuant to Paragraph 1, Article 11 of the Revised Penal Code, the accused-appellant incurred no criminal liability.

WHEREFORE, the instant appeal is GRANTED. That portion of the challenged decision of Branch 1 of the

Regional Trial Court of Tagum, Davao in Criminal Case No. 7851 finding accused-appellant WILSON GUTUAL Y REMOLLENA guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua and to pay the civil liabilities therein mentioned is REVERSED and SET ASIDE and another is hereby entered ACQUITTING him of the charge. He should forthwith be released from detention, unless his further detention is warranted for any other legal or valid ground.

Costs de oficio.

SO ORDERED.

Narvasa, C.J. (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Original Records (OR), 1; Rollo, 4.

[2] Counter-Affidavits of Joaquin Nadera and Wilson Gutual; OR, 22 and23, respectively.

[3] Id., 103.

[4] Id., 252-253.

[5]TSN, 4 December 1991, 30-37.

[6]Huramentado, according to Joaquin Nadera (TSN, 16 December 1991,15).

[7] TSN, 6 September 1993, 11.

[8] Id., 14.

[9] Exhibit "3"; OR, 26.

[10] Id., 252-289; Rollo, 16-53.

[11] OR, 289.

[12] Rollo, 71-72.

[13] Rollo, 74.

[14] Id., 75.

[15] Brief for the Appellee, 20.

[16] See People vs. Bautista, 236 SCRA 102 [1994]. See also People vs. Pido, 200 SCRA 45 [1991]; People vs. Sulit, 233 SCRA 117 [1994]; People vs. Escalante, 238 SCRA 554 [1994].

[17] TSN, 5 December 1991, 5.

[18] TSN, 4 December 1991, 31-32; Id., 12-13.

[19] Id., 33-34; Id., 6-7.

[20] TSN, 4 December 1991, 19.

[21] TSN, 5 December 1991, 23; TSN, 3 February 1993, 11, 20-21.

[22] OR, 15.

[23] TSN 4 December 1991, 10, 16, 20-21; TSN, 5 December 1991, 7.

[24] TSN 15 September 1992, 7.

[25] Id., 8.

[26] TSN, 3 February 1993, 17, 27-28.

[27] TSN, 5 December 1991, 27; id., 22-24.

[28] People vs. De la Cruz, 207 SCRA 632, 646 [1992]; People vs. Ybeas, 213 SCRA 793, 801 [1992]; People vs. Boniao, 217 SCRA 653, 666 [1993]; People vs. Gomez, 235 SCRA 444, 451 [1994]; People vs. Albarico, 238 SCRA 203, 211 [1994]; People vs. Camahalan, 241 SCRA 558, 569 [1995]; People vs. Rivero, 242 SCRA 354, 358 [1995]; People vs. Aliviado, G.R. Nos. 113782-84, 14 August 1995.

[29] TSN, 10 August 1992, 34-35.

[30] Article 11(1), Revised Penal Code.

[31] Rollo, 70.

[32] OR 34; Id., 49.

[33] Id., 35; Id., 50.

[34] See Section 34, Rule 130, Rules of Court.

[35] TSN, 9 January 1992, 62-63.

[36]U.S. vs. Paras, 9 Phil. 367, 370 [1907].

[37] People vs. Encomienda, 46 SCRA 522, 534 [1972].

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