PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AUGUSTO LORETO RINGOR, JR., ACCUSED-APPELLANT.

G.R. No. 123918. December 09, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

For automatic review is the Decision[1] ated November 13, 1995 of Branch 6 of the Regional Trial Court in Baguio City, finding accused-appellant Augusto Loreto Ringor, Jr. guilty of the crime of murder and sentencing him to suffer the supreme penalty of death in Criminal Case No. 13102-R, also guilty of illegal possession of firearms under P.D. No. 1866 in Criminal Case No. 13100-R for and disposing thus:

> "WHEREFORE, Judgment is rendered as follows:
>
> 1. In Criminal Case No. 13102, the Court Finds (sic) the accused Augusto Loreto Ringor Guilty beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code as amended by Section 6, RA 7659, qualified by Treachery and as further qualified by the use of an unlicensed firearm and hereby sentences him to suffer the supreme penalty of Death; to indemnify the heirs of deceased Marcelino Florida, Jr., the sum of P50,000.00 for his death and the sum of P100,000.00 as Moral damages for his death, both indemnification being without subsidiary imprisonment in case of insolvency and to pay the costs.
>
> 2. In Criminal Case No. 13100-R, the Court Finds (sic) accused Augusto Loreto Ringor Guilty beyond reasonable doubt of the offense of Violation of Section 1 PD 1866 (Illegal Possession of firearm and ammunitions) as charged in the Information and hereby sentences him, applying the Indeterminate Sentence Law, to an imprisonment ranging from 17 years 4 months and I day as Minimum to 20 years as Maximum and to pay the costs.
>
> The subject gun, caliber .38 (Paltik) bearing Serial Number 853169 (Exh. A) being the subject of the offense is hereby declared confiscated and forfeited in favor of the State.
>
> The accused Augusto Loreto Ringor is entitled to be credited in the service of his sentence four fifth (4/5) of his preventive imprisonment in accordance with Article 29 of the Revised Penal Code.
>
> SO ORDERED."[2]

Filed on June 28, 1994, the Informations against accused-appellant, alleges:

> In Criminal Case No. 13102-R
> "That on or about the 23rd day of June, 1994, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a Caliber 38 handgun paltick with Serial Number 853169 and with intent to kill, did then and there willfully, unlawfully, and feloniously attack, assault and shoot MARCELINO BUSLAY FLORIDA, JR. thereby inflicting upon the latter hypovolemic shock secondary to massive hemorrhage; multiple gunshot wounds of the liver, stomach, small intestine and mesentric blood vessels, which injuries directly caused his death.

> That the qualifying circumstance of TREACHERY attended the commission of the crime when the accused suddenly attacked victim and shot him several times at the back, with the use of a handgun, thus employing means, methods of forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.
>
> CONTRARY TO LAW."[3]

and in Criminal Case No. 13100-R

> "That on or about the 23rd day of June, 1994, in the City of Baguio, Philippines, and within the jurisdiction of this honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously possess and carry outside of his residence, a firearm, Caliber .38 revolver (Paltik) bearing Serial Number 853169, without any legal authority or permit from any government official or authority concerned, in violation of the above cited provision of law.
>
> CONTRARY TO LAW."[4]

With the accused-appellant, assisted by counsel, entering a plea of Not Guilty upon arraignment, a joint trial of the two cases ensued.

The inculpatory facts and circumstances sued upon are succinctly summarized in the Appellee's Brief as follows:

> "On June 23, 1994, at around 6:00 P.M.(sic), Fely Batanes, a waitress at People's Restaurant located at Kalantiao St., Baguio City, saw appellant Ringor and his two companions enter the restaurant. (Tsn, December 8, 1994, p. 4). After seating themselves, the group ordered a bottle of gin (ibid., p. 6). Minutes later, appellant approached one of the tables where Florida, the restaurant's cook was drinking beer. Without any warning, appellant pulled Florida's hair and poked a knife on the latter's throat. Florida stood up and pleaded with appellant not to harm him (ibid., p. 7). Appellant relented and released his grip on Florida. Thereafter, he left the restaurant together with his companions. However, a few minutes latter he was back (ibid, p.8).
>
> Appellant brandished a gun and menacingly entered the restaurant. Not encountering any resistance, he thus proceeded to the kitchen where Florida worked (ibid). Stealthily approaching Florida from behind, appellant fired six successive shots at Florida who fell down (Ibid., p. 9). His evil deed accomplished, appellant left the kitchen and fled (ibid).
>
> Appellant was chased by a man who while running, shouted at onlookers that the person he was running after was armed and had just killed somebody. Alerted, SPO2 Fernandez, who was then in the vicinity, went into action and nabbed appellant. He frisked appellant and recovered from him a Paltik revolver, caliber. 38, with Serial Number 853169 (Exh. A). He checked the revolver's cylinder and found six empty cartridges (Exhs. T to T-6). He noted that it smelled of gunpowder. He and PO1 Ortega turned over appellant and the confiscated firearm to the Investigation Division of the Baguio Police and then executed a Joint Affidavit of Arrest (Exhibit O). On the same night, Fely Batanes gave her sworn statement (Exhibit E) to the Baguio Police wherein she positively identified appellant as the assailant."
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> xxx xxx xxx
>
> xxx xxx xxx
> NBI Forensic Chemist Ms. Carina Javier found both hands of appellant positive for nitrates as stated in her Chemist Report No. C-94-22. She conducted a microscopic chemical examination on the subject firearm and found that the gun was fired within one week prior to June 27, 1994.
>
> Elmer Nelson Piedad, Ballistician of the Firearm Investigation Division, NBI, Manila, tested and concluded that the slugs recovered from the victim were fired from appellant's firearm. Upon verification from the Firearms Explosive division, Camp Crame, Quezon City, it was found that appellant is not a licensed firearm

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holder nor, was the subject firearm duly registered with the said office (Exh. A)."[5]

The autopsy conducted by Dr. John Tinoyan on the cadaver of the deceased yielded a Necropsy Report, which states:

"POSTMORTEM FINDINGS
`Body of a male, 1.66 m. height, medium built, with complete rigor mortis, lividity well developed on the dependent parts, cloudy cornea and dilated pupils with very pale papebral conjunctive.

`Gunshot wounds: GSW no.1 measuring 10 x 10 mm. serrated edges, positive powder burns located at the left mid clavicular line, posterior, 2 inches below the shoulder. It was directed downward towards the mid-body, penetrating the skin. (sic) soft tissue, middle 3rd of the 3rd rib, the upper and lower lobes of the left lung to the diaphragm, through and through the stomach, lacerating the superior mesentric vessels, perforating the small intestine then lodged at the superior surface of the urinary bladder (slug was recovered marked no. 1)

`GSW no.2 measures 8 mm. diameter, positive powder burns, located on the right shoulder near the s. joint posteriorly, penetrating the skin, soft tissue, then lodged at the surface of the fractured surgical neck of the humorous (sic) (slug recovered). Marked no. 2.

`GSW no. 3 measures 8 mm. Diameter, positive powder burns, located on the right shoulder posteriorly near the joint penetrating the skin, soft tissues, and the head of the Humorous, (sic) then dislodged form the same entry point.

`GSW no. 4 measures 8 x 10 mm, oval shaped, with abrasion superiorly located at the anterior left parasternal line at the level of the 6th ICS. It was directed downward towards the posterior of the body, penetrating the skin, soft tissue, the left lobe of the liver with partial avulsion, then perforating the stomach through and though the duodenum lumbar muscle then lodged underneath the skin, (1) paravertebral, level of L3 (slug recovered marked no. 4).

`CAUSE OF DEATH:

`HYPOVOLEMIC SHOCK SECONDARY TO MASSIVE HEMORRHAGE; MULTIPLE GUNSHOT WOUND(S) OF THE LIVER, STOMACH, SMALL INTESTINE AND MESENTRIC BLOOD VESSELS. Multiple Gunshot Wound(s) of the body.'[6]

Accused-appellant admitted shooting the victim but theorized that he acted in self-defense. As embodied in the Appellant's Brief, the defense version runs thus:

"3.01 On June 23, 1994, at a little after five o'clock in the afternoon, appellant, together with two (2) other companions, entered the People's Restaurant in Baguio City to order drinks. They sat at a table next to another then occupied by Marcelino B. Florida, Jr. (`Florida') and a woman companion (TSN, Testimony of Augusto Loreto G. Ringor, Jr., May 4, 1995, pp. 3-6).

3.02 Soon after receiving their orders, appellant's companion, Ramon Fernandez, stood up and approached Florida to inquire about his (Fernandez') brother, Cesar. Florida angrily responded to the query and said, `Putang ina ninyo! anong pakialam ko diyan!'

3.03 A quarrel thereafter ensued between Fernandez and Florida prompting the appellant to intervene and pacify Fernandez. When Fernandez drew out a gun from his waist, appellant immediately seized the same directing his friend to leave the restaurant before he started hurting other people with his gun. No sooner had Fernandez stepped out, however, Florida, armed with a bolo, came charging in from the kitchen and headed towards the appellant. (Ibid, pp. 6 - 7)

3.04 Surprised, appellant shot Florida with the gun he was holding just as the latter was about to hit him with the bolo. Thereafter, appellant put the gun on the table and walked out of the restaurant. Once already outside

> the restaurant, appellant's other companion, Virgilio, followed him and handed to him the gun he (appellant) left at the table. He then proceeded to surrender the gun and report the incident at the nearest police station. (Ibid, pp. 8 - 9)
>
> 3.05 Before appellant could reach the police station, however, appellant was already arrested by off-duty policeman who brought him back to the People's Restaurant. Appellant was thereafter incarcerated at the Baguio City Police Station. (Ibid, pp. 10 - 12)"[7]

On November 13, 1995, the trial court handed down the decision under automatic review. Accused-appellant contends that:

> I
> THE TRIAL COURT ERRED IN CONVICTING THE APPELLANT FOR SIMPLE ILLEGAL POSSESSION OF FIREARMS AND SENTENCING HIM TO SUFFER AN INDETERMINATE SENTENCE OF 17 YEARS AND 1 DAY AS MINIMUM TO 20 YEARS AS MAXIMUM.
>
> II
> THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED OF MURDER.
>
> III
> THE TRIAL COURT SERIOUSLY ERRED IN SENTENCING THE ACCUSED TO DEATH ON THE GROUNDS THAT: (i) THE CHARGE OF MURDER WAS NOT PROVED BY THE PROSECUTION; AND (ii) ASSUMING ARGUENDO THAT MURDER WAS COMMITTED BY APPELLANT, THE APPROPRIATE PENALTY FOR THE OFFENSE IS RECLUSION PERPETUA THERE BEING NO AGGRAVATING CIRCUMSTANCE TO RAISE THE PENALTY TO DEATH.[8]

Well-settled is the rule that in interposing self-defense, the offender admits authorship of the killing. The onus probandi is thus shifted to him to prove the elements of self-defense and that the killing was justified;[9] otherwise, having admitted the killing, conviction is inescapable. Concomitantly, he must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence.[10]

For self-defense to prosper, it must be established that: (1) there was unlawful aggression by the victim; (2) that the means employed to prevent or repel such aggression was reasonable; and (3) that there was lack of sufficient provocation on the part of the person defending himself.[11]

In the case at bar, accused-appellant failed to prove the element of unlawful aggression. The allegation that the victim allegedly went out of the kitchen armed with a bolo, and was about to hack him (accused-appellant) who was then at an almost prone lying position on the table he was occupying,[12] is a self-serving and unconvincing statement which did not in anyway constitute the requisite quantum of proof for unlawful aggression. Prosecution witness Fely Batanes, a waitress in the restaurant where the shooting incident occurred, was firm in her declaration that the victim was in the kitchen unarmed[13] hen the accused-appellant shot him. The victim had no weapon or bolo. He was neither threatening to attack nor in any manner manifesting any aggressive act which could have imperiled accused-appellant's safety and well-being.

No improper motive having been shown on the part of Fely Batanes to testify falsely against accused-appellant or to implicate him in the commission of the crime, the logical conclusion is that there was no such improper motive and her testimony is worthy of full faith and credit.[14]

What is more, the testimony of Fely Batanes is buttressed by the fact that immediately after the incident, the body of the victim was found lying in the kitchen and not outside; thus weakening further the theory of accused-appellant that he shot the victim while they were at the dining area.[15]

Then too, the nature, location and number of gunshot wounds inflicted on the deceased belie accused-appellant's theory of self-defense.[16] The deceased sustained three gun shot wounds on the back and one in front. Dr. John Tinoyan, who conducted the autopsy on the cadaver of the victim, testified that the gunshot wound on the frontal portion of the victim's body showed a downward trajectory of the bullet on his chest, penetrating the liver, perforating the stomach down to the small intestine, and then lodged underneath the skin.[17] Verily, such finding negates the claim of accused-appellant that he shot the victim while he was at an almost prone lying position and the victim was standing in front of him about to strike with a bolo. If this were true, the trajectory of the bullet should have been upward or better still, it should have been at the level at which the gun was fired while he (accused-appellant) was in a prone lying position.

Rather telling are the three gunshot wounds on the back of the victim, which wounds showed traces of gunpowder which, according to Dr. Tinoyan, indicated that the weapon used was at a distance of less than one meter.[18] Evidently, accused-appellant stealthily approached the victim from behind and fired at him six successive shots, four of which hit him, to ensure his death.[19] If he shot the victim merely to defend himself, there would have been no cause for accused-appellant to pump several bullets into the body of the victim.

In light of the foregoing, the imputation of unlawful aggression on the part of the victim cannot be believed. Absent the element of unlawful aggression by the deceased, there can be no self-defense, complete or incomplete. If there was no unlawful aggression, there was nothing to prevent or repel and the second and third requisites of self-defense would have no basis.[20]

The Court a quo properly appreciated the aggravating circumstance of treachery which qualified the crime to murder. It was clearly established that the accused-appellant fired six successive shots on the victim, suddenly, without warning, and from behind, giving the victim no chance to flee or to prepare for his defense or to put up the least resistance to such sudden assault. There is treachery when the means, manner or method of attack employed by the offender offered no risk to himself from any defensive or retaliatory act which the victim might have taken.[21]

All things studiedly considered and viewed in proper perspective, the mind of the Court can rest easy on a finding that accused-appellant Augusto Loreto Ringor, Jr. is guilty beyond reasonable doubt of the crime of murder, and did not act in self-defense.

Article 248 of the Revised Penal Code, as amended, prescribes the penalty of reclusion perpetua to death for the crime of murder. When, as in this case, neither aggravating nor mitigating circumstance is attendant, the lesser penalty of reclusion perpetua has to be applied,[22] in accordance with Article 63(2) of the Revised Penal Code.

With respect to the conviction of accused-appellant for illegal possession of firearms under P. D. No. 1866, it was held in the case of People vs. Molina[23] nd reiterated in the recent case of People vs. Ronaldo Valdez,[24] that in cases where murder or homicide is committed with the use of an unlicensed firearm, there can be no separate conviction for the crime of illegal possession of firearms under P.D. No. 1866 in view of the amendments introduced by Republic Act No. 8294. Thereunder, the use of unlicensed firearm in murder or homicide is simply considered as an aggravating circumstance in the murder or homicide and no longer as a separate offense. Furthermore, the penalty for illegal possession of firearms shall be imposed provided that no other crime is committed.[25] In other words, where murder or homicide was committed, the penalty for illegal possession of firearms is no longer imposable since it becomes merely a special aggravating circumstance.[26]

It bears stressing, however, that the dismissal of the present case for illegal possession of firearm should not be misinterpreted to mean that there can no longer be any prosecution for the offense of illegal possession of firearms. In general, all pending cases involving illegal possession of firearms should continue to be prosecuted

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and tried if no other crimes expressly provided in R. A. No. 8294 are involved (murder or homicide, under Section 1, and rebellion, insurrection, sedition or attempted coup d' etat, under Section 3).[27]

Pursuant to Article 22 of the Revised Penal Code, where the new law is favorable to the accused, it has to be applied retroactively. Thus, insofar as it spares accused-appellant a separate conviction for illegal possession of firearms, Republic Act No. 8294 has to be given retroactive application in Criminal Case No. 13100-R.

On the matter of the aggravating circumstance of "use of unlicensed firearm" in the commission of murder or homicide, the trial court erred in appreciating the same to qualify to death the penalty for the murder committed by accused-appellant. It should be noted that at the time accused-appellant perpetrated the offense, the unlicensed character of a firearm used in taking the life of another was not yet an aggravating circumstance in homicide or murder; to wit:

> "Neither is the second paragraph of Section 1 meant to punish homicide or murder with death if either crime is committed with the use of an unlicensed firearm, i.e., to consider such use merely as a qualifying circumstance and not as an offense. That could not have been the intention of the lawmaker because the term `penalty' in the subject provision is obviously meant to be the penalty for illegal possession of firearm and not the penalty for for homicide or murder. We explicitly stated in Tac-an:
> There is no law which renders the use of an unlicensed firearm as an aggravating circumstance in homicide or murder. Under an information charging homicide or muder, the fact that the death weapon was an unlicensed firearm cannot be used to increase the penalty for the second offense of homicide or murder to death (or reclusion perpetua under the 1987 Constitution). The essential point is that the unlicensed character or condition of the instrument used in destroying human life or committing some other crime, is not included in the inventory of aggravating circumstances set out in Article 14 of the Revised Penal Code.

A law may, of course, be enacted making the use of an unlicensed firearm as a qualifying circumstance.'[28] (Emphasis supplied)

Thus, before R.A. No. 8294 (which took effect on July 6, 1997) made the use of unlicensed firearm as an aggravating circumstance in murder or homicide, the penalty for the murder committed by accused-appellant on June 23, 1994 was not death, as erroneously imposed by the trial court. There was yet no such aggravating circumstance of use of unlicensed firearm to raise the penalty for murder from reclusion perpetua to death, at the time of commission of the crime.

The amendatory law making the "use of an unlicensed firearm" as an aggravating circumstance in murder or homicide, cannot be applied here because the said provision of R.A. No. 8294 is not favorable to accused-appellant, lest it becomes an ex post facto law.[29]

WHEREFORE, the decision in Criminal Case No. 13102-R is AFFIRMED with the modification that accused-appellant Augusto Loreto Ringor, Jr. is hereby sentenced to suffer the penalty of reclusion perpetua. It is understood that the civil liabilities imposed below are UPHELD.

Criminal Case No. 13100-R instituted pursuant to Presidential Decree No. 1866 is DISMISSED. No pronouncement as to costs.

SO ORDERED.

Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon Jr., JJ., concur.
Davide, Jr., C.J., (Chairman), and Panganiban, J., in the result.

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[1] Penned by Judge Ruben C. Ayson.

[2] Decision, Rollo, pp. 40 - 41.

[3] Rollo, p. 13

[4] Rollo, p. 11.

[5] Appellee's Brief, Rollo, pp. 155 - 158.

[6] Ibid., Rollo, pp. 156-157.

[7] Appellant's Brief, Rollo, pp. 66 -67.

[8] Ibid, pp. 67 - 72.

[9] People vs. Unarce, 270 SCRA 756, pp. 762 - 763; citing: People vs. Macagaling, 237 SCRA 299 [1994]; People vs. Alapide, 236 SCRA 555 [1994]; People vs. Ocana, 229 SCRA 341 [1994]; Bitalac vs. CA, 241 SCRA 351 [1995].

[10] Ibid, citing: People vs. Gregorio, 255 SCRA 380 [1996]; People vs. Aliviado, 247 SCRA 302 [1995]; People vs. Decena, 235 SCRA 67 [1994]; People vs. Salazar, 221 SCRA 170 1993].

[11] Ibid, citing: People vs. Gregorio, supra; People vs. Morin, 241 SCRA 709 [1995]; People vs. Flores, 237 SCRA 635 [1994]; People vs. Gutual, 254 SCRA 37 [1996]; People vs. Bernal, 254 SCRA 699 [1996].

[12] Tsn, p. 16; cross-examination of Augusto Loreto Ringor, May 4, 1995.

[13] Tsn., p. 25; cross-examination of Fely Batanes, December 13, 1994.

[14] People vs. Pija, 245 SCRA 80, pp. 84-85; citing: People vs. Rostata, Jr., 218 SCRA 657.

[15] Tsn., cross-examination of Augusto Loreto Ringor, May 4, 1995, p. 17.

[16] People vs. Unarce, supra, p. 764, citing: People vs. Morin, supra; People vs. Camahalan, 241 SCRA 558 [1995]; People vs. Tanduyan, 236 SCRA 433 [1994]; People vs. Amaro, 235 SCRA 8 [1994]; People vs. Gregorio, 255 SCRA 380 [1996]; People vs. Layam, 234 SCRA 424 [1994].

[17] Tsn, cross examination of Dr. John Tinoyan, December 13, 1994, pp. 6, 10 - 11.

[18] Ibid, pp. 4 - 6.

[19] Ibid, p. 10.

[20] People vs. Unarce, supra, p. 764, citing: People vs. Ramirez, 203 SCRA 25 [1991]; People vs. Alapide 236 SCRA 555 [1994]; and People vs. Morato 244 SCRA 361 [1993].

[21] Ibid., p. 765, citing: Rosales vs. Court of Appeals, 255 SCRA 123 [1996]; People vs. Bello, 237 SCRA 347 1994]; People vs. Muyano, 235 SCRA 184 >[1994]; Art. 14, Revised Penal Code.

[22] Article 63 (2) of the Revised Penal Code.

[23] 292 SCRA 742.

[24] G.R. No. 127663, March 11, 1999.

[25] Section 1 of R.A. No. 8294.

[26] People vs. Molina, supra, at p. 782.

[27] People vs. Valdez, supra.

[28] People vs. Molina, supra, pp. 782-783; citing: People vs. Tac-an, 182 SCRA 601 and People vs. Quijada, 295 SCRA 191.

[29] People vs. Ronaldo Valdez, supra.

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