

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. VIRGILIO BORREROS, DEFENDANT AND APPELLANT.

G.R. No. 125185. May 05, 1999

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-125185/>

PURISIMA, J:

At bar is an appeal by accused Virgilio Borreros from the Decision[1] dated May 13, 1996 of Branch 225 of the Regional Trial Court of Quezon City in Criminal Case No. Q-91-21890, finding him guilty of the crime of Murder, and sentencing him thus:

"WHEREFORE, premises considered, the Court hereby finds the accused Virgilio Borreros GUILTY beyond reasonable doubt of the crime of Murder qualified by treachery for the killing of FEDERICO G. MEDINA. Considering that the death penalty was proscribed at the time said accused committed the crime, he is hereby sentenced to suffer the penalty of reclusion perpetua and to pay P50,000.00 as civil indemnity for the death of the said victim.

Furthermore, the Court likewise finds the said accused GUILTY beyond reasonable doubt of the crime of Homicide for the killing of DANILO E. ALMARIO there being no mitigating circumstance and applying the provisions of the Indeterminate Sentence Law, the said accused is hereby sentenced to suffer an indeterminate penalty of from ten (10) years of prision mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum and to pay P50,000.00 as civil indemnity for the death of the said victim.

SO ORDERED."

Filed on June 26, 1991, by Assistant City Prosecutor[2] Mercedes D. Penamora, the Information[3] indicting appellant of the offense charged, alleges:

"That on or about the 8th day of February 1990, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, did then and there willfully and feloniously, with intent to kill, qualified by evident premeditation and treachery, attack, assault and employ personal violence upon the persons of FEDERICO G. MEDINA and DANILO E. ALMARIO, by then and there shooting them with a handgun, hitting said Federico G. Medina and Danilo E. Almario on the different parts of their bodies, thereby causing serious and mortal wounds which were the direct and immediate cause of their death, to the damage and prejudice of the heirs of the above offended parties, in such an amount as may be awarded to them under the provisions of the Civil Code.

CONTRARY TO LAW."

With the accused entering a negative plea,[4] upon arraignment on May 11, 1994, with the assistance of counsel,[5] trial ensued with the prosecution presenting Arturo Ibarrientos, Faustino Varona, Dr. Dario Gajardo and Dr. Maximo Reyes, as its witnesses.

Synthesized in the Counterstatement of Facts submitted by the Office of the Solicitor General, the People's version runs as follows:

"At about 7:00 p. m. of February 8, 1990, Arturo Ibarrientos, a tricycle driver, was about to park his tricycle along the 'talipapa' (market) in Old Balara, Quezon City. On his way, he saw appellant and Floro Dunayre walk toward the "mahjongan". He noticed that appellant was carrying a gun. He followed appellant. At that time, several persons, including Federico Medina and Danilo Almario, the two unfortunate victims in this case were watching mahjong game. The victims were watching from outside the window. When appellant reached the "mahjongan", he raised his gun and shot Federico at the forehead. Appellant was about one arm length from Federico when he shot him.[6] xxx

The shooting triggered a fracas among the people present in the "mahjongan". xxx Faustino Varona, one of the 'mahjong' players who saw appellant shoot Federico dropped to the floor and hid under the mahjong table. For his part, Arturo Ibarrientos hid behind a door. Seconds later, three to four consecutive shots were heard. When the shooting stopped, Arturo peeped through the opening of the door to see the outcome of the shooting. He saw appellant and heard him say 'come on pare, he is already dead.' Arturo saw the bodies of Federico and Danilo lying on the ground. Arturo immediately left the place to ask help from the bystanders.[7] xxx

The body of Federico was brought to the PNP Crime Laboratory, Quezon City for autopsy. Dr. Dario Gajardo, the head of the autopsy team found that Federico suffered two gunshot, one in the head and the other in the left forearm. xxx

Upon the written request of Danilo's wife, xxx Dr. Maximo Reyes conducted the autopsy on the body of Danilo. The autopsy report showed that Danilo suffered four gunshot wounds located at the left side of the back below the scapula, the right forearm, the left thigh and the lower left femur."[8] xxx

After the prosecution rested, the defense placed on the witness stand Nita Labadia, Aurora Zapanta and the accused Virgilio Borreros, who testified on the theory of the defense, thus:

"Accused-appellant Virgilio Borreros who was a golf caddie from 1988 to 1990, testified that at around 6:00 p. m. of February 8, 1990, he passed by the mahjungan house on his way home from the Capitol City (where the Capitol Golf Course is located), where he saw Federico G. Medina alias Eric and Danilo Almario. Medina who was his childhood friend, called out to him, so he approached him. He stated that Medina 'prodded me with the rattan stick he was holding' and was about to strike him so he ran away. Medina who was drunk, chased him until the bridge. When he got home, he rested, and at about 7:00 p. m., he went back to the mahjongan to get the golf balls he left behind. He again saw Medina and Almario and was about to retreat when he was seen by them. Medina collared him and he warded off Medina's hands which angered the latter, who cursed him saying: "Putang ina, lalaban ka". He also cursed Medina who then drew his gun. He, however, managed to grab the gun and he moved back, but Medina was attacking him so he shot Medina. Almario, who was at the back of Medina was about to get a pamalo, so he shot him at the feet to warn him. Almario, however, faced him with the pamalo and attacked him, so he shot him again in the thigh. Almario continued on attacking him, so he shot him again.[9] xxx

"Borreros further stated that Medina must have harbored ill feelings against him when he rejected the proposition of the latter to sell guns for a commission and was threatened if his proposition is known by other persons.[10] xxx

"Nita Labadia testified that on February 8, 1990, there was a mahjong session in her house which started at about 2:00 p. m. She knew Federico G. Medina from whom she borrowed money with '5/6 interest' and Danilo Almario who was a 'toughie' in their place. Virgilio Borreros, Medina and Almario were kibitzers. She heard Medina and Almario who were armed with a batuta annoying Borreros who left. At about past 7:00 p. m. Borreros came back to get the golf balls he left hanging on the side of the wall of her house, but he was accosted by Medina who held him by his shirt. Borreros parried the hand of Medina and the latter drew his gun but Borreros was able to grab the gun. Medina kept on attacking Borreros so the latter shot the former. The foregoing testimony of Labadia materially and substantially corroborated the testimony of Borreros that he was

being attacked. xxx She also refuted the testimony of Arturo Ibarrientos that he saw the shooting, and stated that 'Ibarrientos was not there. He was not present at that time'. xxx Labadia further testified that Medina is about the same height as Borreros but stouter, and that she noticed the bulge on the waist of Medina. She added that Almario, who was just behind Medina, and who had a batuta, kept on attacking Borreros and that Almario and Medina were both drunk."[11] xxx

On the basis of the testimonial and documentary evidence on record, the trial court handed down the judgment of conviction above alluded to. Therefrom, the accused appealed to this Court, contending that:

I

THE COURT A QUO ERRED IN NOT CONSIDERING THE JUSTIFYING CIRCUMSTANCE OF SELF DEFENSE IN FAVOR OF ACCUSED-APPELLANT VIRGILIO BORREROS.

II

THE COURT A QUO ERRED IN FINDING THAT TREACHERY ATTENDED THE KILLING OF FEDERICO G. MEDINA.

III

THE COURT A QUO ERRED IN ORDERING ACCUSED-APPELLANT TO PAY P50,000.00 EACH FOR THE DEATH OF VICTIMS FEDERICO G. MEDINA AND DANILO ALMARIO.

After a careful examination of the evidence and study of the records on hand, the Court finds no merit in the appeal.

To begin with, the trial court cannot be faulted for rejecting appellant's theory of self defense. When appellant theorized upon self defense he, in effect, assumed the onus probandi to substantiate the same. It became his inescapable burden to prove clearly and convincingly the elements of unlawful aggression on the part of the victim, reasonable necessity of the means employed to prevent or repel the aggression, and lack of sufficient provocation on the part of the person defending himself.[12]

Appellant failed to discharge said burden. Unlawful aggression, a condition sine qua non to a successful invocation of self-defense, was not established.[13] On the witness stand, appellant narrated that earlier in the day, when the victims met their untimely death, Federico Medina tried to strike him with a "batuta". When he was able to break away, Federico Medina chased him from the "mahjongan" up to the bridge where he eventually escaped. He then went to rest in his house but after an hour, he returned to the "mahjongan" to get the golf balls which he had left. The said version runs counter to human experience and behavior, taking into account the great probability that the victims might still be in the vicinity of the "mahjongan". As aptly elucidated upon by the trial court, it was very unlikely for appellant to leave the safety of his house and to go back to the "mahjongan" to expose himself to the danger awaiting him thereat. In fact, appellant's tale that he went back to the place just to recover some golf balls was contradicted by his own admissions. On direct examination, he testified that while walking towards Federico Medina, the latter jabbed him with a "batuta"[14], and aimed to strike him with it until he ran away.[15] His narration of facts and what happened made no mention of the golf balls he supposedly hanged on the wall at the "mahjongan", immediately upon approaching Federico. Then under cross examination, he belatedly stated that he hanged the golf balls when he approached Federico. Under further examination, he confirmed that he did not enter the "mahjong" house at all.[16]

Then too, according to appellant, he was trying to ward off Federico Medina's hands from his collar, when the latter said "Putang Ina, lalaban ka", to which remark he answered and cursed him back, prompting Federico to go for his gun which was tucked in his waist. But while Federico was about to draw the gun, appellant was able to

grab and take possession of the same.[17] Thereupon, appellant claims to have stepped back about seven (7) feet from Federico Medina.[18]

From the aforesaid facts and circumstances, no unlawful aggression could be gleaned. It bears stressing that for unlawful aggression to be attendant, there must be a real danger to life or personal safety.[19] Unlawful aggression requires an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude.[20] Here, the act of the deceased Federico Medina of allegedly drawing a gun from his waist cannot be categorized as unlawful aggression. Such act did not put in real peril the life or personal safety of appellant.[21] Even assuming for the sake of argument that there was really unlawful aggression by Federico on appellant's person, it can be deduced from the latter's own declaration during the trial that the unlawful aggression had ceased the moment Federico was dispossessed of the gun. Unlawful aggression refers to an actually materialized attack, or at the very least, clearly imminent attack. It cannot consist of oral threats or a mere threatening posture.[22] After disarming Federico Medina, appellant became the aggressor, when he shot Federico.

As testified to by appellant, he was able to easily grab the gun from the deceased, Federico Medina, because the latter was allegedly drunk. He recounted that even at a distance of seven (7) feet, he failed to warn Eric of his intention to shoot because Federico Medina was about to attack him with fist-blows. From the aforesaid facts, it can be unerringly concluded that not only had aggression by Federico ceased at that point, there was no reasonable necessity on the part of appellant to shoot Federico. Evidence is wanting to demonstrate that the appellant had endeavored to move farther from Federico by stepping back some more or by simply running away, as he had done during their previous confrontation or encounter. Besides, if as alleged by appellant, Federico was in a state of intoxication, he (appellant) could have easily opted to run away instead of shooting the victims.

Neither did the trial court err in rejecting appellant's theory of self defense considering the nature and number of gunshot wounds of the victims. The deceased Danilo Almario suffered four (4) gunshot wounds on the left side of his back below the scapula, on the right forearm, on the left thigh and on the lower left femur, all fired by the assailant from behind. The deceased, Federico Medina, suffered two (2) gunshot wounds, one on the head and another on the left forearm. Verily, the nature, location and number of the wounds sustained by the victims make appellant's theory of self-defense implausible.[23] As held in *People vs. Guarin*,[24] the presence of several gunshot wounds on the body of the deceased is physical evidence that strongly militates against appellant's stance. If appellant shot the victims just to defend himself, it defies reason why he had to inflict several wounds on them. Irrefutably, the multiple and serious injuries sustained by the victims evinced a determined effort on the part of appellant to kill them.[25]

Indeed, appellant's failure to discharge his burden of giving evidentiary support to his invocation of self-defense is abundantly clear. Evidence for the defense is of doubtful veracity and weight. It is neither clear nor convincing. To top it all, appellant took flight immediately after the incident and went into hiding for three (3) long years before he was arrested and brought to court to face his accusers. Appellant's flight negates his plea of self-defense.[26] As repeatedly held by this Court, flight evidence of consciousness of guilt and betrays the existence of a guilty conscience.[27]

With respect to the second assigned error, the Court believes that the prosecution has established the qualifying circumstance of treachery. For treachery to be a qualifying circumstance, it must be shown as convincingly as the crime itself, that the malefactor employed such means, method or manner of execution to ensure his safety from the victim's defensive or retaliatory acts; and such means, method or manner of execution were deliberately adopted.[28] In the case under scrutiny, the concurrence of the said conditions is firmly anchored on the declarations of the prosecution witnesses, Arturo Ibarrientos and Faustino Varona, whose testimonies are

consistent with the autopsy findings of Drs. Gajardo and Reyes. Both Ibarrientos and Varona witnessed the start of the aggression insofar as the deceased, Federico Medina, was concerned. Ibarrientos narrated that upon seeing the appellant carrying a gun, he followed him closely until they reached the "mahjongan". Thereat, the appellant called out "pare" to Federico Medina whose attention was then on the "mahjong". When the latter turned his face around, appellant shot him on the forehead. This testimony of Arturo Ibarrientos was corroborated by Faustino Varona on the witness stand who testified that he was seated about two (2) arms length from the victims who were watching "mahjong", when appellant suddenly shouted "pare" to Federico Medina, even as he aimed and fired the gun at him.

The sudden and unanticipated killing of Federico Medina reinforces the trial court's finding of treachery, notwithstanding the fact that the assailant and the victims were face to face at the start of the attack. As consistently held by this Court, an unexpected and sudden attack under circumstances which render the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack constitutes alevosia.[29] That the attack was frontal does not preclude the presence of treachery as the same rendered the attack no less unexpected and sudden.[30] The essence of treachery is that the attack is deliberate and without warning -- done in a swift and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape.[31]

In contrast, the killing of Danilo Almario cannot be adjudged as perpetrated with treachery. As correctly found by the trial court, in view of the absence of proof as to the manner the victim was attacked, the killing could not be considered as qualified by treachery.[32] Where no particulars are known as to the manner the aggression was made or how the act resulting to the death of the victim, began and developed, it could not be established by mere suppositions that the accused perpetrated the killing with treachery.[33] To repeat, being a qualifying circumstance, treachery must be proved as convincingly as the crime itself. Here, witnesses Ibarrientos and Varona failed to convince the lower court that the appellant employed such means, method or manner in the killing of Danilo which insured its commission sans any risk to assailant coming from any defense which the victim could have put up. Both witnesses admitted that immediately after Federico Medina was shot, they took cover and only heard a few more gunshots from where they were hiding.

The People, represented by the Office of the Solicitor General,[34] maintain that inasmuch as Danilo was shot from at the back, treachery qualified the killing to murder. This contention is untenable. While the evidence shows that Danilo was shot from behind,[35] such circumstance is not conclusive of the attendance of treachery insofar as the deceased Danilo was concerned, absent a showing how the latter's wounds were inflicted. Settled is the rule that treachery cannot be presumed. It must be proved by clear and convincing evidence, as conclusively as the killing itself.[36] The presence of treachery may not be simply assumed from the mere fact that the fatal wounds were found at the back of the deceased.[37]

The third and final assignment of errors does not need extended disquisition. Suffice it to state that following prevailing jurisprudence and in line with the policy of the Court, for the death of each victim an award of P50,000.00, as civil indemnity or compensatory damages, without any need of proof of damages, is proper.[38]

WHEREFORE, the judgment appealed from is hereby AFFIRMED. Costs against the appellant.

SO ORDERED.

Romero (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] Penned by Judge Arsenio J. Magpale.

[2] Quezon City.

[3] Original Records, p. 1.

[4] The case was originally assigned to Branch 85 of the same court. Except for Virgilio Borreros, the other accused remained at large. Virgilio Borreros could only be arraigned on May 11, 1994 after he was apprehended on November 10, 1993 in Tacloban City. At his arraignment, the said accused entered a negative plea and on that issue trial ensued on May 18, 1994 and was terminated on February 28, 1995. Before Branch 85 could render its decision on this case, the same was ordered returned to the Executive Judge of the same court for re-assignment pursuant to a resolution En Banc of the Supreme Court, dated December 5, 1995, as a consequence of which, this case was re-assigned to Branch 225; Rollo, pp. 20-21.

[5] Atty. Socrates Erasmo of the Public Assistance Office. Original Record, pp. 57-58.

[6] Appellees Brief, p. 5.

[7] Ibid., p. 6.

[8] Ibid., pp. 6-7.

[9] Appellants Brief, p. 4.

[10] Ibid., p. 5.

[11] Ibid.

[12] People vs. Navarro, G.R. No. 125538, September 3, 1998.

[13] People vs. Balamban, 264 SCRA 619.

[14] A night stick, Appellees Brief, p. 8.

[15] TSN, November 7, 1994, p. 11.

[16] TSN, November 9, 1994, p. 5.

[17] TSN, November 7, 1994, p. 14.

[18] TSN, November 7, 1994, p. 22.

[19] People vs. Cagalingan, 188 SCRA 313.

[20] Escoto vs. Court of Appeals, 278 SCRA 752.

[21] Appealed decision, p. 6.

[22] People vs. Tac-an, 182 SCRA 601.

[23] Appealed Decision, p. 7.

[24] 259 SCRA 34

[25] People vs. Unarce, 270 SCRA 756.

[26] People vs. Gregorio, 255 SCRA 380.

[27] Ibid.

[28] People vs. De La Cruz, G.R. No 109619-23, June 26, 1998

[29] People vs. Dinglasan, 267 SCRA 26.

[30] Ibid.

[31] People vs. De La Cruz, supra.

[32] Appealed Decision, p. 10.

[33] People vs. Sumaoy, 263 SCRA 460.

[34] Ricardo P. Galvez, Solicitor General; Rollo, p. 105.

[35] Exh. G, Original Records, p. 118.

[36] People vs. Garma, 271 SCRA 517.

[37] Ibid.

[38] People vs. Espanola, 271 SCRA 689; see also People vs. Gregorio, 255 SCRA 380 citing People vs. Sison, 189 SCRA 643; and People vs. Rey Solis, G.R. No. 124127, June 29, 1998.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.