

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY RUBISO, ALIAS “ALOG,” ACCUSED-APPELLANT.

G.R. No. 128871. March 18, 2003

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

There can be no self-defense, complete or incomplete, unless the victim has committed an unlawful aggression against the person defending himself.[1]

This is an appeal from the decision of the Regional Trial Court, Branch 39, Iloilo City, finding appellant Jimmy Rubiso @ “Alog” guilty beyond reasonable doubt of murder and imposing upon him the penalty of reclusion perpetua under Article 248 of the Revised Penal Code.

Jimmy Rubiso was charged with murder under an Information filed with the said trial court, which reads:

“That on or about November 6, 1992, in the Municipality of Pavia, Province of Iloilo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with a firearm of unknown caliber, with deliberate intent and decided purpose to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot SERAFIN W. HUBINES with said firearm the accused was then provided that time inflicting multiple gunshot wounds on the latter which caused his death immediately thereafter.”[2]

The facts as narrated by the Solicitor General in the appellee’s brief are:

“Prosecution eyewitness Alejandro Pulomeda testified that on November 6, 1992, he went to Jaspe Metal Craft Industries (Jaspe) at Pavia, Iloilo to canvass the price of a rice thresher. He intended to ask assistance from his friend, Serafin Hubines who was working at Jaspe. Then, he went straight and saw Hubines busy putting a bolt on a rice thresher. Hubines was in a squatting position. While he was walking toward Hubines’ direction, he saw herein appellant also approaching Hubines’ from behind. He noticed that appellant’s left hand was wrapped with a towel. As appellant walked closer to Hubines, he unwrapped his hand revealing a handgun of unknown caliber, and shot Hubines. The latter still managed to stand but he was again successively shot by appellant. Pulomeda was shocked and frozen by what he witnessed. After a few minutes, he managed to run out of the Jaspe’s compound and went back home. On the following morning, nonetheless, he went to see the father of Hubines and narrated to him everything he saw (TSN, December 14, 1993, pp. 3-24).

“PO3 Ananias Gallaza is a member of the Philippine National Police detailed at the residence of Jaspe’s owner, Andres Jaspe. He was the security guard on duty at Jaspe on that fateful day. He remembered hearing gunshot while he was in the comfort room at about 12 noon so he immediately went out. He went straight to the shop and saw Hubines lying on his back, bloodied. He and the other workers brought Hubines to the hospital (TSN dated April 26, 1993, pp. 5-6, 9, 13-18, 21).

“Patrolman Danilo Opong, another policeman detailed at Jaspe, testified that while he was eating lunch, he heard a series of gunshots coming from the shop where the threshers were being manufactured. On his way to the shop, he met a certain Romeo Alanto who informed him that Hubines had been shot by appellant. At the

shop, he saw Hubines bathed in his own blood. He immediately placed appellant under custody and thereafter brought him to the police station in Pavia (TSN, dated May 4, 1993, pp. 5, 10, 13, 19-25).

“Hubines arrived at the hospital clinically dead. He was twice operated but in vain (TSN, dated July 20, 1993, pp. 5, 8-10).

“Medico-legal Dr. Tito Doromal testified that he conducted a post-mortem examination on Hubines. He found six (6) bullet wounds on the body of the victim. One bullet wound in the right forehead, another bullet on the left side of the neck and four bullet wounds in the thoraco abdominal region. His findings led him to conclude that two bullet wounds were inflicted by the assailant while standing behind the victim (TSN, dated July 26, 1994, pp. 2-13).”[3]

The defense has a different version.

Appellant has been working as a welder at the Jaspe Light and Steel Industries. On November 6, 1992, while he was welding a tiller, Serafin Hubines, Jr. passed by and kicked it. When he confronted appellant, the latter asked, “Why, do you want to fight?” Then Hubines boxed appellant on his chest. He fell down on a sitting position. At that point, Hubines pulled his gun. Appellant immediately stood up and held Hubines’ hands. They grappled for its possession and both fell on the ground. Then the gun exploded. According to appellant, he was not sure who “caused” the shot. He noticed that many people approached them. Appellant lied down on his stomach and covered his ears. That was the time he heard three or more shots. He stood up and saw Hubines lying on the ground full of blood. He walked a few steps and met PO3 Danilo Opong. Appellant told the latter that he was only defending himself. Patrolman Opong then arrested him and brought him to the Pavia Police Station for investigation. Meanwhile, Romeo Zuspa, a worker in the compound, took the firearm and gave it to Patrolman Opong who, in turn, “surrendered” it to his station.

Resty Amado, also a worker in the same compound, corroborated appellant’s testimony.

After hearing, the trial court rendered a decision convicting appellant of the crime charged, the dispositive portion of which reads:

“WHEREFORE, premises considered, the accused Jimmy Rubiso is hereby found guilty beyond reasonable doubt of the crime of Murder as provided under Art. 248 of the Revised Penal Code, and there being no mitigating or aggravating circumstance, is hereby sentenced to suffer the penalty of reclusion perpetua. Said accused is further ordered to pay the father of the deceased the amount of P106,288.85 as actual damages and to the legal heirs of the deceased the amount of P50,000.00 for his wrongful death, P30,000.00 as moral damages; P560,000.00 for loss of earning capacity and costs of the suit.[4]

“The accused who is detained, is hereby credited with the number of days he spent under detention, if he is qualified, otherwise, he shall be credited only with four fifths (4/5) of his preventive imprisonment. The accused is further ordered to be sent to the National Penitentiary in Muntinlupa, Metro Manila, even if he appeals.

“SO ORDERED.”

Hence, this appeal.

Appellant ascribes to the trial court the following errors:

“I. THE LOWER COURT ERRED IN FINDING THAT ACCUSED FAILED TO PROVE BY CLEAR AND CONVINCING EVIDENCE THE ELEMENTS OF SELF-DEFENSE DESPITE THE FACT THAT THE ACCUSED PROVED THE THREE ELEMENTS OF SELF-DEFENSE;

“II. GRANTING ARGUENDO THAT ACCUSED WAS NOT ABLE TO PROVE ALL THE ELEMENTS

OF SELF-DEFENSE, THE LOWER COURT ERRED WHEN IT SENTENCED THE ACCUSED TO LIFE IMPRISONMENT BECAUSE EVIDENCE SHOW (sic) THAT THERE WAS INCOMPLETE SELF-DEFENSE, HENCE ACCUSED IS ENTITLED TO A LOWER PENALTY OF ONE OR TWO DEGREES AS PROVIDED IN ARTICLE 69 OF THE REVISED PENAL CODE;

“III. GRANTING ARGUENDO THAT ALL THE ELEMENTS OF SELF-DEFENSE WERE ABSENT, THE LOWER COURT ERRED IN FINDING THAT THE CRIME COMMITTED BY THE ACCUSED IS MURDER ATTENDED BY TREACHERY, BECAUSE EVIDENCE SHOWS THAT THERE WAS NO TREACHERY, AS A MATTER OF FACT, THE VICTIM CHALLENGED THE ACCUSED TO A FIGHT BEFORE HE WAS KILLED, HENCE IF ACCUSED INDEED COMMITTED THE ACT, HE SHOULD BE PUNISHED FOR THE CRIME OF HOMICIDE.”

In invoking self-defense, appellant is deemed to have admitted having killed the victim and the burden of evidence is shifted on him to establish convincing evidence that excludes any vestige of criminal aggression on his part.[5]

To successfully claim self-defense, the accused must prove the existence of the following: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed by the person being attacked to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[6] Unlawful aggression is a condition sine qua non for the justifying circumstance of self-defense. It contemplates an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude. The person defending himself must have been attacked with actual physical force or with actual use of weapon.[7] Of all the elements, unlawful aggression, i.e., the sudden unprovoked attack on the person defending himself, is indispensable.[8]

Appellant insists that when the victim pulled out his gun, both grappled for its possession. They fell and there were bursts of gunfire. He must have killed the victim but he was only defending himself.

Assuming that Hubines had a gun and pulled it, however, records show that he did not manifest any aggressive act which may have imperiled the life and limb of herein appellant. It is axiomatic that the mere thrusting of one's hand into his pocket as if for the purpose of drawing a weapon is not unlawful aggression.[9] Even the cocking of a rifle without aiming the firearm at any particular target is not sufficient to conclude that one's life was in imminent danger.[10] Hence, a threat, even if made with a weapon, or the belief that a person was about to be attacked, is not sufficient. It is necessary that the intent be ostensibly revealed by an act of aggression or by some external acts showing the commencement of actual and material unlawful aggression.[11]

Another factor which militates against appellant's claim of self-defense is the nature and number of wounds suffered by the victim.

Dr. Tito Doromal, who conducted the autopsy examination, found that the victim's body sustained six (6) bullet wounds. One bullet wound was on the right forehead and another on the left side of the neck. Four (4) bullet wounds were along the thoraco abdominal region.

The location and presence of gunshot wounds on the body of the victim eloquently refute appellant's allegation of self-defense. It is an oft repeated rule that the presence of a large number of wounds, their location and their seriousness would negate self-defense. Instead, they indicate a determined effort to kill.[12]

We thus agree with the trial court that appellant, in killing the victim, did not act in self-defense.

The prosecution was able to establish that appellant suddenly and unexpectedly shot the victim at the back without any provocation on his part. In fact the trial court found that “Bullet wounds Nos. 3 and 4 on the thoraco

abdominal region were inflicted while the assailant was at the back of the victim.” The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring without risk to the aggressor the commission of the crime.[13] There being treachery, appellant must be convicted of murder.

Under Article 248 of the Revised Penal Code, as amended, the penalty imposable when the crime was committed in 1972 is reclusion temporal in its maximum period to death which has a duration of 17 years, 4 months and 1 day to death. There being no mitigating or aggravating circumstance that attended the commission of the crime, the imposable penalty is the medium period of reclusion temporal in its maximum period to death which is reclusion perpetua. Hence, the trial court imposed the correct penalty upon appellant.

On the civil aspect of the case, we affirm the trial court’s award of P50,000.00 as civil indemnity to the heirs of the victim. By way of exemplary damages based on the presence of the qualifying circumstance of treachery, an amount of P25,000.00 should be awarded to the said heirs.[14]

As to actual damages, Serafin Hubines, Sr. presented the receipts showing that he spent P106,288.85 as hospital and medical expenses; P13,000.00 as funeral expenses, or a total of P119,288.85.[15]

We increase the trial court’s award of moral damages from P30,000.00 to P50,000.00 in line with current jurisprudence.[16] The purpose of such award is not to enrich the heirs of the victim but to compensate them for their wounded feelings.[17] As borne out by human nature and experience, a violent death, such as the one at bar, invariably and necessarily brings about emotional pain and anguish on the part of the victim’s family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. Such violent death not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, but often leaves them with the gnawing feeling that an injustice has been done to them. For this reason, moral damages must be awarded even in the absence of any allegation and proof of the heirs’ emotional suffering.[18]

As to the victim’s earning capacity, the trial court found that his annual gross income at the time of his death was P76,800.00 computed at the rate of P1,600.00 a week for forty-eight (48) weeks. From this amount is deducted the necessary and incidental expenses, estimated at 50%, leaving a balance of P38,400.00.[19] His net annual income would then be multiplied by his life expectancy, using the following formula: $\frac{2}{3} \times 80 - 34$ (age of the victim at time of death). Considering that he was 34 years old when he died, his life expectancy would be 31. Multiplying the net balance of his annual income by his life expectancy, the loss of his earning capacity is P1,190,400.00, thus:

In computing the life expectancy of a person the following formula is used:

Life expectancy -

$$\frac{2}{3} \times [80 - \text{the age of the victim at the time of death or } 34] = 30.66 \text{ or } 31$$

Loss of earning capacity -

$$P38,400.00 [\text{net annual income}] \times \text{life expectancy} = P1,190,400.00[20]$$

A modification of the trial court’s finding that the victim’s loss of earning capacity amounts to P560,000.00 on the basis of a life expectancy of 28 years is, therefore, in order.

WHEREFORE, the assailed decision of the trial court in Criminal Case No. 39400 finding appellant JIMMY RUBISO @ “Alog” guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the

penalty of reclusion perpetua is hereby AFFIRMED, with the MODIFICATION that he is further ordered to pay the heirs of the deceased (a) P119,288.85 as actual damages; (b) P50,000.00 as moral damages; and (c) P1,190,400.00 representing the loss of his earnings.

Costs de oficio.

SO ORDERED.

Puno, (Chairman), Panganiban, Corona and Carpio-Morales, JJ., concur.

[1] People vs. Flores, G.R. No. 138841, April 4, 2001, 356 SCRA 332.

[2] Rollo at 10.

[3] Id. at 121-124.

[4] Id. at 34.

[5] Galang vs. Court of Appeals, G.R. No. 128536, January 31, 2000, 324 SCRA 139, 144, citing People vs. Sarense, G.R. No. 97438, October 20, 1992, 214 SCRA 780.

[6] People vs. Bonifacio, G.R. No. 133799, February 5, 2002; People vs. Iglesia, G.R. No. 132354, September 13, 2001, 365 SCRA 166.

[7] Tangaiin vs. Bonifacio, G.R. No. 133799, February 5, 2002; People vs. Ebrada, G.R. No. 122774, September 25, 1998, 357 Phil. 345.

[8] People vs. Iglesia, supra at 166, citing People vs. Cotas, G.R. No. 132043, May 31, 2000, 332 SCRA 627.

[9] People vs. Calantoc, G.R. No. L-27892, January 31, 1974, 55 SCRA 458, 461.

[10] Almeda vs. Court of Appeals, G.R. No. 120853, March 13, 1997, 269 SCRA 643, 650.

[11] People vs. Patalinghug, G.R. Nos. 125814-15, November 16, 1999, 318 SCRA 116, 135, citing Almeda vs. Court of Appeals, id.

[12] People vs. Quening, G.R. No. 132167, January 8, 2002; People vs. Belbes, G.R. No. 124670, June 21, 2000, 334 SCRA 161, 167.

[13] People vs. Tumayao, G.R. No. 137045, April 16, 2001, 356 SCRA 491, 505, citing People vs. Belbes, id.

[14] People vs. Catubig, G.R. No. 137842, August 23, 2001, 363 SCRA 621.

[15] Records at 337-340.

[16] People vs. Niel Piedad, et al., G.R. No. 131923, December 5, 2002, citing People vs. Mosquera, G.R. No. 129209, August 9, 2001, 362 SCRA 441; People vs. Dan Ave, G.R. Nos. 137274-75, October 18, 2002.

[17] People vs. Danilo Cueto, G.R. No. 147764, January 16, 2003, citing People vs. Galvez, G.R. No. 130397, January 17, 2002.

[18] People vs. Niel Piedad, et al., supra; People vs. Frank Lobregas, et al., G.R. No. 147649, December 17, 2002 citing People vs. Labitad, G.R. No. 132793, May 7, 2002; Carlos Arcona vs. Court of Appeals and People, G.R. No. 134784, December 9, 2002; People vs. Pablito Ilo, G.R. No. 140731, November 21, 2002, citing People vs. Victoriano Ernosa, et al., G.R. No. 137273, September 17, 2002.

[19] People vs. Visperas, Jr., G.R. No. 147315, January 13, 2003, citing People vs. Laut, G.R. No. 137751, February 1, 2001, 351 SCRA 93, 99.

[20] People vs. Wilson Antonio, Jr., G.R. No. 144266, November 27, 2002.

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