

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HONORATO GALVEZ, GODOFREDO DIEGO, AND JOHN DOE, ACCUSED.

G.R. No. 130397. January 17, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-appellant Godofredo Diego and his co-accused Honorato Galvez were initially charged with homicide and two (2) counts of frustrated homicide before Branch 14 of the Regional Trial Court of Malolos, Bulacan. This Court, however, ordered the transfer of venue of the cases to the Quezon City Regional Trial Court where charges of murder and two (2) counts of frustrated murder were filed against both accused-appellant Diego and accused Galvez. Another information was subsequently filed against accused Galvez for carrying a licensed firearm outside his residence without a permit.

The information for murder, docketed as Criminal Case No. Q-94-55484, reads as follows:

That on or about the 11th day of November 1993, in the Municipality of San Ildefonso, Province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with two others whose true names and identities are still unknown and they mutually helping and aiding one another, while armed with firearms, with intent to kill and by means of treachery, did there and then willfully, unlawfully, and feloniously attack, assault and shoot several times one ALVIN VINCULADO with the use of the said firearms, thereby inflicting upon the said ALVIN VINCULADO mortal wounds which directly caused his death.

The information for the first count of frustrated murder, docketed as Criminal Case No. Q-94-55485, reads as follows:

That on or about the 11th day of November 1993, in the Municipality of San Ildefonso, Province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with two others whose true names and identities are still unknown and they mutually helping and aiding one another, while armed with firearms, with intent to kill and by means of treachery, did there and then willfully, unlawfully, and feloniously attack, assault and shoot several times one MIGUEL VINCULADO, JR. on the body, thereby inflicting gunshot wounds, which ordinarily would have produced the crime of murder as a consequence, but nevertheless did not produce it by reason or cause or causes independent of their will, that is, due to the timely and able medical assistance rendered to said MIGUEL VINCULADO, JR. which prevented his death.

The information for the second count of frustrated murder, docketed as Criminal Case No. Q-94-55486, reads as follows:

That on or about the 11th day of November 1993, in the Municipality of San Ildefonso, Province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with two others whose true names and identities are still unknown and they mutually helping and aiding one another, while armed with firearms, with intent to kill and by means of treachery, did

there and then willfully, unlawfully, and feloniously attack, assault and shoot several times one LEVI VINCULADO, on the body, thereby inflicting gunshot wounds, which ordinarily would have caused the death of said LEVI VINCULADO, thereby performing all the acts of execution which would have produced the crime of murder as a consequence, but nevertheless did not produce it by reason or cause or causes independent of their will, that is, due to the timely and able medical assistance rendered to said LEVI VINCULADO, which prevented his death.

Upon arraignment, accused-appellant pleaded “not guilty” to the charges. Trial on the merits ensued.

At 8:00 o’clock in the morning of November 11, 1993, accused-appellant Godofredo Diego went to Miguel Vinculado’s house and told him that some coconut trees on his lot were going to be cut down to give way to the road widening project.

Miguel went to the project site, located some 300 meters away, accompanied by his nephews Levi and Alvin. When they arrived at the site, Miguel conferred with former Barangay Captain Osmundo Eguia, photographer Angel Mano and accused-appellant Diego. He registered his objection to the expropriation of a portion of his lot, saying that his family had already donated land to the municipal government during the term of former Mayor Viudez. After that, Miguel and Levi returned to their house while Alvin went somewhere else.

Sometime later, Alvin came home and informed Miguel that the coconut trees on his lot had already been cut. Miguel, Levi and Alvin went back to the site, bringing along with them an Olympus still photo camera and a Sony video camera. When they arrived at the site, they saw that the trees had already been cut and Mayor Honorato Galvez was supervising the road widening. Miguel took pictures and filmed the ongoing road widening.

While Miguel was filming the payloader on Villacorte Street, Mayor Galvez approached him and said, “Di ba pinapunta ko na si Diego sa inyo?” Miguel answered, “Alam namin iyon pero bakit pinutol niyo pa!” He reiterated that his family had already donated land to the municipal government. Mayor Galvez retorted, “Putang ina, hindi ba ninyo alam na pabor sa inyo ito?” Miguel replied that the matter should have first been brought to the municipal council.

Miguel then turned his back and, together with Alvin and Levi, walked towards Viudez Street. Mayor Galvez suddenly drew his handgun and tried to seize the video camera from Miguel, but failed. Felixberto Bernardo was able to wrest the video camera from him. Then, Mayor Galvez attempted to grab the Olympus camera from Levi, but the latter tried to hide it behind his back. Miguel advised Levi to hand the camera to Mayor Galvez since they were armed. Alvin then told Miguel to go home. At that point, Mayor Galvez went to Miguel’s side and said, “Putang ina, ang iinam ninyo, birahin mo na.” After uttering those words, gunshots rang out. Mayor Galvez shot Miguel with his handgun while Diego shot Miguel, Levi and Alvin with an armalite rifle.

Levi suffered multiple gunshots on his face, chest and shoulder. His mandible was dislocated and he lost vision in one eye. Thereafter, the policemen arrived and took him to the hospital. Miguel was hit on the arm and stomach, but he likewise survived. Alvin, however, died of four gunshot wounds on the back.

For his part, Godofredo Diego claimed that he was on his way to the Municipal Hall when he learned from two construction workers that Mayor Galvez and the Vinculados were having an argument. He went back to the project site, where he found the L-300 van of the Vinculados. He peeped inside the van but found no one. He claimed having found a loaded armalite rifle instead. He got the rifle allegedly because he forgot to bring his own firearm. When he reached the project site, he saw the Vinculados attacking Mayor Galvez from behind. He then saw Alvin pull something out from his shoulder bag. He fired a warning shot in the air and shouted, “Magsitigil kayo, magsitigil kayo.” Instead of heeding him, Alvin allegedly pointed a gun at Mayor Galvez. Diego was forced to shoot Alvin. Alvin fell to the ground. Miguel picked up the gun and pointed it at Diego shouting, “Putang-ina

mo Fred, bakit mo binaril ang pamangkin ko?” This forced Diego to shoot Miguel. Levi, rushed towards Diego in a zigzag manner brandishing a knife, and Diego shot him as well.

Thereafter, Diego heard Mayor Galvez shout, “Putang-ina mo, Fred, bakit mo binaril ang mga iyan?” Confused, he fled and threw away the rifle into a creek. He stayed in Gubat, Sorsogon for four (4) days. Later, he convinced himself that he acted in lawful self-defense and defense of others. He told his brother to retrieve the armalite rifle from the creek, but his brother failed to find it. Diego surrendered to Colonel Reynaldo Acop before a warrant of arrest could be issued.

The trial court rendered a decision, the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, the Court pronounces judgment as follows:

Accused Godofredo Diego is found guilty beyond reasonable doubt of the crimes of murder and double frustrated murder, with the mitigating circumstance of voluntary surrender. Since the crimes were committed before the reimposition of the death penalty, the Court hereby imposes for the murder of Alvin Vinculado the penalty of Reclusion Perpetua; for the frustrated murder of Miguel Vinculado, the penalty of imprisonment from eight (8) years and one (1) day of Prision Mayor as minimum to fourteen (14) years, four (4) months and one (1) day of Reclusion Temporal as maximum; for the frustrated murder of Levi Vinculado the penalty of imprisonment from eight (8) years and one (1) day of Prision Mayor as minimum to fourteen (14) years, four (4) months and one (1) day of Reclusion Temporal as maximum. Accused Godofredo Diego is also sentenced to pay civil damages to the Vinculados as a collective group as follows: (1) actual damages of P181,461.00; (2) for the death of Alvin Vinculado, the sum of P50,000.00; (3) moral damages of Two Million (P2,000,000.00) Pesos; (4) attorney’s fees of P559,885.00; and pay the cost.

Accused Honorato Galvez is acquitted from the charges of murder and double frustrated murder on the ground of insufficiency of evidence. He is also acquitted from the charge of illegal carrying of firearm on the ground that the said act was not a violation of law. The bail bond of accused Galvez is hereby discharged.[1]

Accused-appellant Godofredo Diego appealed to this Court assigning the following errors:

- That the Lower Court seriously erred in not considering that the accused Godofredo Diego merely acted in self-defense and defense of stranger in shooting Alvin Vinculado, Levi Vinculado and Miguel Vinculado;
- That the Decision of the Lower Court against Accused Godofredo Diego is contrary to law and evidence.

In essence, accused-appellant argues that the provocation came from the Vinculados, who had resentment in their hearts when they angrily rushed to the road widening project and confronted the mayor about the cutting down of coconut trees. Moreover, he claims that at the time of the incident, he had no other means to prevent Alvin from shooting Mayor Galvez, and he had no other means of defending himself against Miguel and Levi. He did what he was constrained to do, that is, pull the trigger of the armalite rifle, in order to defend a stranger and himself against the unlawful attack of the aggressors.

By claiming self-defense and defense of stranger, accused-appellant in effect admits the killing of Alvin and the wounding of Miguel and Levi. When an accused invokes self-defense, the onus probandi to show that the killing was justified shifts to him. Even if the prosecution evidence was weak, it could not be readily dismissed considering that the accused had openly admitted his responsibility for the killing.

Self-defense, like alibi, is inherently a weak defense, which can easily be concocted. For self-defense to prosper, appellant must prove by clear and convincing evidence the following elements: (1) unlawful aggression on the part of the victim; (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.[2] In order that defense of stranger may be appreciated,

the following requisites must concur: (1) unlawful aggression by the victim; (2) reasonable necessity of the means to prevent or repel it; and (3) the person defending be not induced by revenge, resentment, or other evil motive.[3]

The question of whether appellant acted in self-defense, and defense of a stranger for that matter, is essentially a question of fact.[4]

Accused-appellant's contention that the provocation came from the Vinculados is untenable. The evidence on record is clear that it was the party of Mayor Galvez who provoked the Vinculados in the first place. Not only were their coconut trees being cut, their camera and video equipment were also forcibly taken from them. Moreover, heated and threatening words were uttered by Mayor Galvez to Miguel Vinculado.

Accused-appellant likewise claims that he was forced to shoot the victims because of the danger to his life and that of Mayor Galvez. He claims that Alvin was armed with a revolver while Levi held a knife. However, there was no corroborating evidence to this effect. In fact, it was even contradicted by the physical evidence. This Court agrees with the trial court when it found, thus:

[T]he Court will not accept Diego's insinuation that it could be inferred from the circumstances that Miguel gave the revolver and the knife to Boy Viudez. True that Miguel did not disclose the full story in his direct-examination, but it was Diego's burden to prove the physical existence of the revolver and the knife as the vital foundation of his claim that there was peril to life. Hence, Diego should have advised the police to look for witnesses who could testify that Miguel took away the revolver and the knife. These witnesses were the jeepney driver, the persons at the vulcanizing shop, and Boy Viudez. In fact, if Miguel was mysterious in his behavior, so too was Diego. The record shows that Diego did not preserve the evidence by picking up and then submitting the revolver and the knife to the police. While it can be assumed that the idea of preserving the evidence might not have crossed Diego's confused mind, it is too much to stretch the assumption that the same idea did not also enter the mind of his own eyewitnesses Bernardo and Lingo. All three of them could not have been simultaneously thoughtless. But the Court is not saying that witnesses Bernardo and Lingo lied in the entirety of their testimonies. In the case of *People v. Regala*, 113 SCRA 613, 655, the Supreme Court took judicial notice that "There is no perfect or omniscient witness because there is no person with perfect faculties or senses or a perfect control of his emotions." Hence, when variations in testimonies occur, the rule is that "It is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts. And it has been aptly said that even when witnesses are found to have deliberately falsified in some material particulars, it is not required that the whole of their uncorroborated testimony be rejected, but such portions thereof deemed worthy of belief may be credited." (*People v. Mabuyo*, 63 SCRA 532, 539-540).

Besides, Diego's claim is contradicted by the physical evidence found during the search by the police team. The established fact is that the police team did not find any revolver or knife. They recovered only nine empty armalite shells, caliber 5.56 mm, per the testimonies of Chief of Police Moises Guevarra and SPO3 Francisco Victorio. These nine empty armalite shells were marked as "OTE-1" to "OTE-9" under Exh. "30" as part of the Report No. FID-319-93 dated December 8, 1993. The police also found a black bag (Exh. "1") containing a SONY AC power adaptor and a manual booklet (Exh. "17"). As a trier of facts, the Court prefers to be bound by the hard evidence in the record rather than by oral testimonies or innuendoes.

Furthermore, Diego himself testified that accused Galvez angrily shouted "putang-ina mo Fred, bakit pinagbabaril mo ang mga iyan." This utterance would not have been made by accused Galvez if there were in fact a revolver and a knife beside the bodies of the fallen Vinculados. The said weapons would have been noticed by accused Galvez and it would not be necessary for him to ask "bakit pinagbabaril mo ang mga iyan." Hence, the adverse implication of the utterance is binding upon accused Diego because Diego himself, and his witnesses Bernardo and Lingo, testified that the utterance was made by accused Galvez. Whether the same utterance is also binding upon Levi and Miguel Vinculado, who said they did not hear it, will be resolved later.

Therefore, without proof of the physical existence of the revolver and knife, the Court must rule that accused Diego has not convincingly shown a legal justification for his act of firing. There was nothing to imperil the life of Diego and Galvez. There was no unlawful aggression by the Vinculados, even assuming that there was an altercation for the possession of the cameras, and even assuming that the Vinculados clenched their fists in anger, with Miguel saying “A ganoon ba. Kung gusto mo Mayor ay sasapakin kita.” Anger is not equivalent to unlawful aggression, whether on the part of Galvez or on the part of the Vinculados. As defined by the Supreme Court, “Unlawful aggression refers to an attack that has actually broken out or materialized or at the very least is clearly imminent: it cannot consist in oral threats or a merely threatening stance or posture” (People v. Tac-an, 182 SCRA 601, 613). This being the case, there is no need for the Court to ascertain if Diego mistook the SONY AC power adaptor as a revolver when he said that Alvin was pulling something out of the black bag, or if he fired just to ingratiate himself into the favors of the mayor, or if his act of firing was the reflex action of a man who is trigger happy.[5]

In both self-defense and defense of a stranger, unlawful aggression is a primordial element. Unlawful aggression presupposes an actual, sudden and unexpected attack or imminent danger on the life and limb of a person — not a mere threatening or intimidating attitude — but, most importantly, at the time the defensive action was taken against the aggressor.[6]

The trial court found that there was no unlawful aggression on the part of the Vinculados for there was no evidence that they were even brandishing the alleged revolver and knife. Even granting for the sake of argument that Levi approached Diego with a knife, still, the shooting was not justified.

In *People v. Caguing*,[7] we held:

For such posture to be properly appreciated, there should be a necessity in both the action taken as well as in the means used, and the latter depends on whether the aggressor himself was armed, the nature and quality of the weapon used, and the physical conditions and sizes of both the aggressor and the person defending himself. Undoubtedly, it is true that the victim had a knife and accused-appellant had a gun, his shooting the victim may not be justified as accused-appellant could not have been in any real danger of his life. The knife was no match to the home-made handgun of accused-appellant and, in fact, there is no evidence that accused-appellant sustained any injuries evincive of an aggression which would justify his firing the gun to protect himself. Thus, the shooting was unwarranted and was an unreasonable act of violence, even as a means of defense, under the circumstances. Moreover, accused-appellant left his victim and did not even bother to report the matter to the proper authorities. In this light, the justifying circumstance of self-defense may not survive in the face of accused-appellant’s flight from the crime scene, and his failure to inform the authorities of the incident. Too, no knife was found in the crime scene, thus negating his tale of a second aggression.

All told, the plea of self-defense cannot be justifiably entertained where it is not only uncorroborated by any separate competent evidence but also extremely doubtful in itself. Accused-appellant having failed to discharge the burden proving his defense, his conviction shall of necessity follow, on the basis of his admission to the killing.

Accused-appellant’s effort to buttress his theory that the shooting was an act of self-defense and defense of stranger by claiming that said armalite rifle belonged to the Vinculados can only be described as desperate. The trial court observed, thus:

The Court also rejects Diego’s claim that the armalite rifle belonged to the Vinculados. It is undisputed that police inspector Reynaldo De Guzman, firearms examiner of the PNP Crime Laboratory, stated in his Report No. FD-319-93 (Exh. “30”) that the nine empty shells were not fired from the baby armalite rifle with Serial No. 132841 which Diego was authorized to possess. The rifle actually used by Diego in the shooting could belong to anyone, not necessarily the Vinculados. In any case, it is irrelevant whoever was the owner of the rifle. Therefore, there is no need for the Court to ascertain the owner thereof. The Court will not ascertain what

sloppy police investigation failed to do.[8]

The nature and number of wounds suffered by the Vinculados likewise negate any claim of self-defense. This Court notes that Levi's mandible was literally hanging from his face as a result of a bullet wound. He was rendered blind in one eye due to another bullet wound and absorbed two more bullets on the chest and shoulder. On the other hand, Alvin died due to four gunshot wounds all on his back. It bears repeating that the nature and number of wounds inflicted by the accused are constantly and unremittingly considered as important indicia which disprove a plea for self-defense because they demonstrate a determined effort to kill the victim and not just defend oneself.[9]

Therefore, accused-appellant failed to satisfy the requirements of self-defense and defense of a stranger to justify the shooting of the Vinculados.

Finally, accused-appellant's acts of fleeing and hiding in Sorsogon immediately after the shooting are indicative of his guilt. As the trial court correctly observed:

Diego's act of going to many places after the shooting finally negates his claim. As held by the Supreme Court in *People v. Maruhom*, 132 SCRA 116, 125: "x x x He should have come out brave as a lion, and told the authorities that he killed the victim merely to defend himself. x x x Flight is incompatible with his self-defense. Running away from the scene of the crime is an indication of guilt." [10]

In the absence of any showing that the factual findings were reached arbitrarily or without sufficient basis, appellate courts accord the highest respect and even finality to findings of fact by trial courts.[11] This Court finds more than sufficient bases for the trial court's findings of fact.

As to the award of damages, this Court affirms the amounts of actual damages and civil indemnity for the death of Alvin Vinculado awarded by the trial court. However, this Court finds the award of moral damages in the amount of Two Million Pesos to be excessive and not in accord with prevailing jurisprudence. The amount of P50,000.00 for each of the offended parties, namely, Miguel Vinculado, Levi Vinculado and the heirs of Alvin Vinculado, or a total sum of P150,000.00, is deemed reasonable. It must be stressed that the purpose of the award of moral damages is not to enrich the heirs of the victim but to compensate them for the injuries to their feelings.[12] The award of attorney's fees is also excessive and is hereby reduced to P100,000.00. The Court has the power to reduce the amount of attorney's fees to render it reasonable and conscionable.[13]

WHEREFORE, the decision of the Regional Trial Court of Quezon City, Branch 88, is AFFIRMED with the MODIFICATION that accused-appellant is ORDERED to pay Miguel Vinculado, Levi Vinculado and the heirs of Alvin Vinculado, the collective sum of P181,461.00 as actual damages, P50,000.00 as civil indemnity for the death of Levi Vinculado, P150,000.00 as moral damages and P100,000.00 as attorney's fees.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Penned by Judge Tirso D'C. Velasco.

[2] *People v. Dano*, G.R. No. 117690, September 1, 2000.

[3] Revised Penal Code, Article 11, paragraph 3.

[4] *People v. Dano*, supra.

- [5] Decision, Rollo, pp. 90-91.
- [6] People v. Dela Cruz, G.R. No. 128359, December 6, 2000.
- [7] G.R. No. 139822, December 6, 2000.
- [8] Decision, Rollo, p. 91.
- [9] People v. Magoyac, 330 SCRA 767 [2000].
- [10] Decision, Rollo, p. 91.
- [11] People v. Dano, *supra*.
- [12] People v. Bituon, G.R. No. 142043, September 13, 2001.
- [13] Lagon v. Hooven Comalco Industries, Inc., G.R. No. 135657, January 17, 2001.

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