

PEOPLE OF THE PHILLIPPINES, PLAINTIFF-APPELLEE, VS. SGT. ROGELIO REPIROGA, ACCUSED-APPELLANT.

G.R. No. 138451. May 17, 2001

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

SGT. ROGELIO REPIROGA appeals from the Decision of the Regional Trial Court of Morong, Rizal, finding him guilty of murder, aggravated by treachery and evident premeditation, and imposing upon him the penalty of reclusion perpetua and to pay the heirs of the deceased Sgt. Eduardo H. Dino P50,000.00 for moral damages, another P50,000.00 for civil indemnity, and still another P50,000.00 for exemplary damages.[1]

Accused-appellant was a member of the Philippine Army at the NCO Academy, 2nd Infantry Division, Camp Capinpin, Tanay, Rizal. He lived inside Camp Capinpin with his family. Sometime in 1996 a complaint was filed before the Office of the Provincial Prosecutor charging Sgt. Rogelio Repiroga with murder for the violent death of Sgt. Eduardo H. Dino, also a member of the Philippine Army and likewise a resident of Camp Capinpin.

Sgt. Repiroga having failed to submit his counter-affidavit in the preliminary investigation, Assistant Provincial Prosecutor Rolando G. Ramirez recommended on the sole basis of complaining witness' evidence the filing of the corresponding Information. Accordingly, on 19 October 1995 an Information for murder was filed against accused-appellant Repiroga aggravated by treachery and evident premeditation.[2]

On 18 April 1996, accused-appellant filed an Urgent Motion to Quash the Information on two (2) grounds: first, that the ex-parte resolution of the preliminary investigation warranted a re-investigation; and, second, that as an enlisted serviceman, the provincial prosecutor had no authority to file the Information against him but the Deputy Ombudsman for the Military pursuant to Administrative Order No. 8 of the Office of the Ombudsman.[3]

In his Comment/Opposition to the Urgent Motion to Quash, State Prosecutor Marianito C. Santos claimed that the accused was not deprived of his right to refute the charges against him and to present counter-affidavits, but it was the accused in fact who failed to do so within the reglementary period of ten (10) days. The State Prosecutor also asserted that the preliminary investigation conducted by the Assistant Provincial Prosecutor was proper for two (2) reasons: first, the shooting was not related to the performance of the official duties of the accused; and, second, the accused was no longer under the jurisdiction of the Ombudsman since he had already been discharged from the service.[4]

On 30 July 1996 the trial court denied the motion; reconsideration was likewise denied.

Editha Dino, widow of Sgt. Eduardo H. Dino, and their son Darwin narrated at the trial that on 19 June 1995 at around 5:00 o'clock in the afternoon, Sgt. Dino, his wife Editha, and son Darwin were in a huddle in their tricycle parked in front of their house some five (5) to ten (10) meters below the road level. Sgt. Dino and Editha were seated on the saddle while Darwin was in the sidecar. They were talking about Sgt. Dino being suspected by Sgt. Repiroga as the one responsible for the former's water disconnection. Earlier, at around 3:00 o'clock that

afternoon, accused-appellant Repiroga had gone to the house of Dino to ask about the disconnection although the latter disclaimed any knowledge of it. Thereafter, accused-appellant Repiroga left.

In the midst of their discussion, Editha happened to look behind her and saw Sgt. Repiroga approaching with an M-16 rifle. Alarmed, she exclaimed, "Pa, si Repiroga may dalang baril." "Takbo!" Sgt. Dino answered "Takbo kayo Ma!" then Editha and Darwin scampered away. When she stopped to look back, Editha saw Sgt. Repiroga approach her husband, cock his rifle and call out, "Pare!" Immediately, Sgt. Dino raised his hands as if to ward off Sgt. Repiroga. Sgt. Dino pleaded, "Pare, Pare," and turned around to run but Sgt. Repiroga shot him.

As Sgt. Dino stumbled on the grass, Sgt. Repiroga sprayed him with bullets. Later, Sgt. Repiroga turned over his rifle to Sgt. Nodo and gave himself up at the NCO Headquarters.

Although Sgt. Dino was rushed to Camp Capinpin Station Hospital, he could not be saved. He died in the hospital. Dr. Jesusa N. Vergara medico-legal officer, reported that hemorrhage was the cause of Dino's death as a result of the gunshot wounds on his trunk. Dr. Vergara also found multiple lacerated wounds and abrasions on various parts of his body.[5]

Accused-appellant, in his defense, claimed that on 19 June 1995, at around 5:00 o'clock in the afternoon, he and his wife were walking home after his duty at the NCO Headquarters. According to him, he was advised by his superior that the battalion should be ready for any attack so he brought his M-16 rifle with him. When they passed in front of the house of Sgt. Dino, accused-appellant noticed a tricycle parked along the road. Suddenly, Sgt. Dino came out of the tricycle and aimed his 9-mm pistol at him. Sgt. Dino fired at him but missed. To protect himself, he raised his M-16 rifle and shot Sgt. Dino who fell to the ground. After he fell, Sgt. Dino aimed his pistol at accused-appellant who let out another burst of gunfire at the fallen Dino.

At this juncture, Editha and Darwin appeared from the direction of their house and ran towards Sgt. Dino. Darwin picked up the 9-mm pistol of his father. Thereafter, Repiroga turned over his rifle to Sgt. Nodo who happened to be passing by. Sgt. Repiroga, accompanied by his wife, later went back to the NCO Headquarters and gave himself up to Col. de Vela and Sgt. Delito who immediately placed him in the military stockade.

Among those who testified for the defense were Vicky Ercilla, a komadre of Sgt. Dino; Roberto Joaquin, a carpenter working on a house being constructed inside the camp; and, Josefina Gorgon, a laundry woman. The crux of their testimonies was that while walking on the road they saw Sgt. Dino suddenly emerge from the tricycle and fire at Sgt. Repiroga. In essence, their testimonies corroborated that of accused-appellant that he only fired back to defend himself from Sgt. Dino.

But the trial court rejected accused-appellant's claim of self-defense, holding that from the testimonies of the prosecution witnesses Repiroga had fired at the defenseless Dino. The court a quo also appreciated the presence of treachery and evident premeditation considering that a few hours before the shooting Sgt. Repiroga inquired about the water pipe that was disconnected from their house supposedly upon instigation of Sgt. Dino. The court below concluded that Repiroga failed to present clear and convincing evidence to establish his theory of self-defense.[6]

Accused-appellant's contentions may be narrowed down to four (4) issues: first, whether the trial court, a civil court and not a court-martial, had jurisdiction over his person who was then a military officer as well as over the offense; second, whether the Assistant Provincial Prosecutor had jurisdiction to conduct the preliminary investigation; third, whether the filing of the Information was proper since he failed to file his counter-affidavit during preliminary investigation; and, fourth, whether he acted in lawful self-defense.[7]

Accused-appellant contends that at the time of the incident he was a member of the AFP with the rank of staff sergeant. As such, he was subject to CA 408, as amended, otherwise known as the Articles of War, which vests

jurisdiction over members of the AFP with the courts-martial.

As early as 1938 jurisdiction was already vested in courts-martial over any crime or offense punishable under CA 408 as amended, otherwise known as the Articles of War, committed by soldiers belonging to the regular force of the Philippine Army.[8] Thereafter, PD 1822 qualified the jurisdiction of courts-martial to include offenses committed in relation to the performance of their duties.[9] Subsequently, PD 1850[10] provided that a case shall be disposed of or tried by the proper civil or judicial authorities when court-martial jurisdiction over the offense has prescribed under Art. 38 of CA 408, as amended, or court-martial jurisdiction over the person of the accused military personnel can no longer be exercised by virtue of their separation from the active service without jurisdiction having duly attached beforehand unless otherwise provided by law.[11] Later, Sec. 1 of PD 1850 was amended by PD 1852 to include the situation where the President may in the interest of justice order or direct, at any time before arraignment, that a case involving a military officer be tried by the appropriate civil court.[12]

In 1991, due to the several failed coups d' etat, RA 7055[13] was enacted. It repealed PDs 1822, 1822-A, 1850 and 1852, and all other acts, general orders, presidential issuances, rules and regulations inconsistent therewith. It effectively placed upon the civil courts the jurisdiction over certain offenses involving members of the AFP and other members subject to military law. RA 7055 provides that when these individuals commit crimes or offenses penalized under The Revised Penal Code (RPC), other special penal laws, or local government ordinances, regardless of whether civilians are co-accused, victims, or offended parties which may be natural or juridical persons, they shall be tried by the proper civil court, except when the offense, as determined before arraignment by the civil court, is service-connected in which case it shall be tried by court-martial.[14]

Hence, under RA 7055, the jurisdiction to try members of the AFP who commit crimes or offenses covered by the RPC, and which are not service-connected, lies with the civil courts. The fact of accused-appellant's separation from the service is of no moment since from the outset, the civil courts have jurisdiction over his offense and his person.

Accused-appellant also contends that under Art. 71 of CA 408, preliminary investigation should be conducted by an authorized military officer before any information could be filed against AFP members.

We disagree. There is nothing in Art. 71 of CA 408 that exclusively vests the authority on a military officer to conduct preliminary investigation in cases involving members of the AFP. It simply mentions an "investigating officer" who shall examine available witnesses requested by the accused,[15] without reference to his being a military officer.

Given the foregoing, we cannot uphold the contention of accused-appellant that the authority to file charges against him lies within the jurisdiction of the Office of the Ombudsman. It is true that the Ombudsman has jurisdiction over complaints filed against members of the armed forces as they are deemed public officials of an instrumentality of the government within the contemplation of the law. However, under AO 08, the power of the Ombudsman to conduct preliminary investigation over a military case may be exercised together with any provincial or city prosecutor or his assistants since all prosecutors are now deputized Ombudsman prosecutors.[16] It is only in the prosecution of cases cognizable by the Sandiganbayan where the Ombudsman enjoys exclusive control and supervision.[17]

We agree with accused-appellant that a preliminary investigation guarantees the accused his right to submit counter-affidavits and present evidence. However, if the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the 10-day period, the investigating officer shall base his resolution on the evidence presented by the complainant.[18] During the prescribed period, accused-appellant failed to present his counter-affidavit despite due notice. Hence, the Assistant Provincial Prosecutor conducting the preliminary

investigation did not err when he resolved the case solely on the basis of complainant's evidence and, for his own negligence, accused-appellant cannot now blame the investigating officer.

We now dispose of the case on its merits.

It is elementary that an accused who sets up the plea of self-defense has the burden to show, to the satisfaction of the court, the concurrence of all the elements constituting self-defense, to wit: (a) that there was unlawful aggression on the part of the victim; (b) that there was a reasonable necessity of the means employed to prevent or repel it; and, (c) that there was lack of sufficient provocation on his part. Accused-appellant claims that all of these elements are present in the case at bar.

A resolution of the matter requires a hard look into the credibility of the witnesses. The Court has consistently recognized that the trial court's assessment of their credibility is to be respected in view of its unique position to observe their demeanor. The Court may however set aside the trial court's findings and appreciate the evidence anew in exceptional circumstances as the instant case will show.

Appearing as witnesses for the prosecution were Editha and Darwin Dino, wife and son of the deceased, respectively. Owing to their relationship with the deceased, their testimonies must at the outset be viewed with caution, if not suspicion.

Editha and Darwin claimed that they were present during the killing. Editha testified that upon seeing Sgt. Repiroga carrying an M-16 rifle she was immediately alarmed and told her husband to run.[19] The cause of her alarm however perplexes the Court.

On cross-examination, Editha told the court that the mere sight of Sgt. Repiroga approaching them with a gun was the sole reason why she told her husband to run. While reference to an earlier argument regarding the water disconnection between her husband and the accused would seem to be a plausible motive for the killing, Editha denied this as the cause for her alarm.[20] She also denied knowing of any misunderstanding between the two (2) soldiers prior to the incident;[21] yet, she claimed that she instantly panicked at the sight of Sgt. Repiroga carrying a gun when it was inside a military camp where the sight of gunslinging soldiers is, to state the obvious, very common and normal. The testimony of Darwin neither clarified this matter. It was laconic and bereft of details. He even disclaimed any recollection of a family discussion regarding the water disconnection,[22] and even denied knowledge of any feud between his father and accused-appellant.[23]

The gaps and inconsistencies in the testimonies of prosecution witnesses seem to indicate that they did not actually witness the commission of the crime and their narration was a mere fabrication. This failure to show proof beyond reasonable doubt that accused-appellant feloniously and willfully killed the deceased validated accused-appellant's claim of self-defense.

Accused-appellant claims that the deceased was waiting in ambush behind a tricycle when he and his wife passed by his house; that the deceased allegedly shot him with his .9 mm pistol but missed; that instinctively he raised his rifle and shot the victim as an act of self-preservation; and that he shot him once again even when he was already down on the ground because the latter attempted to shoot him once more.

After reviewing the evidence spread on records, we are persuaded that it was the deceased who initiated the attack on the accused amounting to unlawful aggression against him and the aggression continued even when deceased was already down on the ground. The records do not disclose any sufficient provocation on the part of accused-appellant prior to the attack. He and his wife were simply walking on the road on their way home. His prior inquiry regarding the water disconnection could not be a form of sufficient provocation contemplated by law to negate his claim of self-defense. In fact, he denied being in an unpleasant mood when he made the inquiry,

such denial being even corroborated by the wife of the deceased who testified that accused-appellant appeared calm and composed when he asked about the water disconnection. On the other hand, accused-appellant claimed that it was the deceased who had been harboring ill will since his request for water connection was denied while his was granted.

The use by accused-appellant of his M-16 service rifle to counter the attack of the deceased who was using a .9 mm pistol was reasonably necessary and justified to repel the aggression, although this .9 mm pistol was never presented in evidence. The prosecution claimed that it was returned to the artillery prior to the commission of the crime. Accused-appellant positively testified that it was picked up by the son of the deceased immediately after the shooting incident. The failure of accused-appellant to present the pistol may have weakened, to a considerable degree, his claim of self-defense. But the witnesses for the defense consistently maintained that the deceased utilized a pistol in initiating his attack against accused-appellant, and we find no reason to disbelieve them.

The three (3) witnesses for the defense are disinterested witnesses. They are not related to accused-appellant. They do not hold any grudge against the deceased and his family. To note, one of them is even the komadre of the deceased. They repeatedly professed that they testified not at the behest of accused-appellant but out of their own volition in the interest of truth and justice. They also denied having been coached by the defense counsel. They were walking on the same road, individually, when Sgt. Dino appeared from behind the tricycle and fired at accused-appellant with a .9 mm pistol. They were also there when accused-appellant returned fire from his M-16 rifle. They unanimously asserted that the deceased was alone when he made the attack on accused-appellant. Their testimonies were clear, corroborative and consistent with accused-appellant's claim of self-defense; at the very least, the guilt of the accused-appellant was not proved beyond reasonable doubt.

WHEREFORE, the Decision of the court a quo convicting accused-appellant SGT. ROGELIO REPIROGA of murder, aggravated by treachery and evident premeditation, and imposing upon him the penalty of reclusion perpetua as well as ordering him to pay the heirs of the victim moral damages, civil indemnity and exemplary damages is REVERSED and SET ASIDE, and accused-appellant is ACQUITTED of the crime charged. The Director of Prisons is ordered to facilitate his immediate release from custody and to report thereon to this Court within five (5) days from notice hereof unless accused-appellant is being held for some other lawful cause. Costs de officio.

SO ORDERED.

Mendoza, Buena and De Leon, Jr., JJ., concur.

Quisumbing, J., on leave.

[1] Decision penned by Judge Reynaldo G. Ros, RTC-Br. 80, Morong, Rizal, Crim. Case No. 1507-T, prom. 5 March 1999.

[2] Records, p. 42.

[3] Id., pp. 46-48.

[4] Id., p. 65.

[5] Medico-legal Report No. M-756-95, 30 June 1995, prepared by Dr. Jesusa N. Vergara, P/Senior Inspector, Chief, Med-Legal Division, Crime Laboratory, National Headquarters, Philippine National Police, Camp Crame, Quezon City.

[6] Records, p. 289.

[7] Accused-appellant contends that the lower court erred: (a) in not finding that he acted in lawful self-defense; (b) in relying solely on the testimonies of the wife and the son of the deceased; (c) in disregarding the testimonies of the defense witnesses; (d) in not finding that he had no premeditated intention to kill the victim; (e) in presuming that Sgt. Dino did not fire a gun at him first; (f) in denying his Motion to Quash the Information and to re-investigate the case; and, (g) in taking cognizance of the action when he, being a member of the AFP at the time of the killing, was outside its jurisdiction.

[8] Sec. 1, CA 408, "An Act for Making Further and More Effectual Provision for the National Defense by Establishing a System of Military Justice for Persons Subject to Military Law," 14 September 1938.

[9] See Sec. 1, PD 1822, "Providing for the Trial by Courts-Martial of Members of the Armed Forces Charged with Offenses Related to the Performance of their Duties," 16 January 1981.

[10] "Providing for the Trial by Courts-Martial of Members of the Integrated National Police and Further Defining the Jurisdiction of Courts-Martial over Members of the Armed Forces of the Philippines," 4 October 1982.

[11] Sec. 1, par. (b), PD 1850.

[12] PD 1852, "Amending Sec. 1 of PD 1850 entitled 'Providing for the Trial by Courts-Martial of Members of the Integrated National Police and Further Defining the Jurisdiction of Courts-Martial over Members of the Armed Forces of the Philippines,'" 5 September 1984.

[13] "An Act Strengthening Civilian Supremacy over the Military by Returning to the Civil Courts the Jurisdiction over Certain Offenses involving Members of the Armed Forces of the Philippines, other Persons Subject to Military Law, and the Members of the Philippine National Police, Repealing for the Purpose Certain Presidential Decrees," O.G. 87, No. 34, 26 August 1991.

[14] Ibid.

[15] Art. 71. Charges; action upon. x x x No charge shall be referred for trial until after a thorough and impartial investigation thereof shall have been made. This investigation will include inquiries as to the truth of the matter set forth in said charges, form of charges, and what disposition of the case should be made in the interest of justice and discipline. At such investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after such investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides x x x (CA 408).

[16] AO 08 is entitled "Clarifying and Modifying Certain Rules of Procedure," 2 November 1990.

[17] Ibid.

[18] Sec. 3, par. (d), Rule 112, Rules of Court.

[19] TSN, 9 December 1996, p. 5.

[20] Id., p. 14.

[21] Id., p. 6.

[22] TSN, 13 August 1997, p. 45.

[23] TSN, 6 October 1997, p. 74.

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