PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DOMINGO ARNANTE Y DACPANO, APPELLANT.

G.R. No. 148724. October 15, 2002

Ponente: VITUG, J.

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VITUG, J.:

On 16 July 2000, Valentin Arnante, his son Domingo Arnante, and other relatives were celebrating the birth anniversary of Christopher Arnante, another son of Valentin and brother of Domingo, at their residence in Sto. Domingo, Iriga City. Shortly after lunch, the group started having drinks in the living room of the Arnante residence. At around six o'clock in the evening, Valentin and his son Domingo, by then already both drunk, came to a heated argument. Domingo told his father to stop embarrassing him in front of guests but the latter still went on berating his son. Feeling ignored, Domingo stood up, proceeded to his room, followed by his brother Christopher, and took hold of a handgun. Domingo fired the gun towards the ground scaring the people in the house and prompting them to rush out through the front door. Domingo went out of the house through the kitchen door. His father Valentin followed until he was fired at and shot twice by Domingo. The victim was not able to make it to the hospital.

Domingo Arnante y Dacpano was indicted for parricide in an information that read –

> "That at about 6:00 o'clock in the evening of July 16, 2000 at their residence at Zone 5, Mabunga St., Sto. Domingo, Iriga City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully, unlawfully and feloniously, with intent to kill, shoot his own father, Valentin Arnante y Tabayag twice with a handgun hitting his stomach and left arm which directly caused his instantaneous death"[1] -

to which charge he pleaded "not guilty" when arraigned.

Elena Arnante, the wife of the victim and mother of Domingo, testified that she was in the living room when she heard two gunshots. She dashed out from the room and she saw near the kitchen her husband down on the floor with gunshot wounds and her son Domingo standing by the kitchen door still holding the handgun. She immediately called for help and brought Valentin to the Our Lady of Mediatrix Hospital where her husband was declared "dead on arrival."

Christopher Arnante stated that he tried to caution his brother Domingo when the latter got hold of the handgun but his brother would not hear of it. Domingo went out of the house through the kitchen door. Valentin followed. Christopher then heard two gunshots. He did not see where the first shot was directed at but he saw the second shot being aimed at his father. Entering the house, he saw his father bleeding and about to fall to the ground. When he tried to assist his father, Domingo also fired at him but missed. Christopher hurriedly went to the house of a neighbor to call for help. Failing to contact any police officer, he personally went to the police station where, not long after, he was informed that his father was dead on arrival at the hospital.

Dr. Pablo Filio, Jr., the Assistant City Health Officer of Iriga City, conducted a postmortem examination on the

cadaver of Valentin Arnante about six hours after the latter's death. The physician's postmortem report indicated that the victim suffered two (2) gunshot wounds – one on the left arm which penetrated 2 inches below the armpit and another gunshot wound on the umbilical region, 3 inches below the umbilicus – the second wound being fatal and the immediate cause of death of the victim. He also testified that from the entry and direction of the wound, it would appear that the assailant was in front of the victim.

Domingo Arnante admitted having shot his own father twice but sought to justify his misdeed. He said that during the celebration of his brother's birthday, his father, without any apparent reason, got mad at him and started scolding him. He told his father to stop humiliating him in front of all the guests but the victim persisted. He left the group and went to his room to get his gun. He fired the gun downwards to make his father stop censuring him. He then went out of the house through the kitchen door but his father still followed and threatened to hack him with a bolo. He was so embarrassed that he lost control of himself and shot his father twice. He promptly left the scene but soon thereafter surrendered to the police authorities.

The Regional Trial Court of Iriga City, Branch 35, which had tried the case, rendered a decision, on 09 February 2001, rejecting the plea of self-defense and convicting Domingo Arnante; it held:

> "WHEREFORE, finding the accused DOMINGO ARNANTE guilty beyond reasonable doubt of the crime of parricide defined and penalized under Article 246 of the Revised Penal Code, he is sentenced to a penalty of reclusion perpetua, pay the indemnity of P50,000.00 and to pay the costs."[2]

In its brief for appellant, the defense raised a lone assignment of error to the effect that the "the trial court erred in convicting accused-appellant despite the fact that he (had) acted in legitimate self-defense."[3]

The claim of self-defense is untenable. When an accused admits killing the victim but invokes self-defense to escape criminal liability, he assumes the burden to establish his plea by credible, clear and convincing evidence.[4] In order that the plea of self-defense can prevail, three basic conditions must concur, i.e., (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.[5] Unlawful aggression presupposes an actual, sudden and unexpected attack or imminent danger on the life and limb of a person defending himself[6] and not merely a threatening or intimidating attitude. The aggression must be real and not just imaginary.[7]

The testimony of appellant himself easily negates any showing of unlawful aggression on the part of his father. Observe his testimony -

> "Q.
>
> On July 16, 2000 at or about 6:00 o'clock in the evening at Sto. Domingo, Iriga City while you were at your house together with your father what happened if any?
>
> "A. Now, there was a birthday celebration in connection of the birthday of my brother and a drinking spree was held.
>
> "Q.
>
> What is the name of your brother?
>
> "A. Christopher.

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"Q.

What happened between you and your father at around 6:00 o'clock in the evening on said date and time and year and place?

"A. We had an altercation.

"Q.

And what is that altercation about between you and your father?

"A. I cannot understand sir. He suddenly got mad at me.

"Q.

And what happened when your father suddenly got mad at you?

"A. I told my father not to scold me anymore as there were very many people there it was shameful on my part.

"Q.

Then what happened when you told that to your father?

"A. He continued scolding me.

"Q.

By the way you mentioned 'papa,' is that the way you call your father?

"A. Yes, sir.

"Q.

So, what happened when your papa continued to scold you?

"A. I left.

"Q.

Where did you proceed?

"A. I entered my room to put a stop to his scolding.

"Q.

And after you entered your room what happened next?

"A. He continued scolding me so what I did was I took my gun and then fired downward.

"Q.

Why did you fire your gun downward?

"A. In order for my father to stop scolding me as there were so many people I was getting embarrassed.

"Q.

After firing your gun downward what happened next?

"A. I went out of the house through the kitchen.

"Q.

Why did you went out the house through the kitchen Mr. Witness?

"A. So I could leave the place.

"Q.

Were you able to leave the house through the kitchen?

"A. Yes, sir.

"Q.

And what happened when you were able to go out the house?

"A. Now I went out of the house so I could leave the place but after I went out of the house I saw my father followed me closely.

"Q.

And what happened when your father followed you closely?

"A. He was still scolding me and he was carrying a bolo.

"Q.

What happened when you noticed that your father followed you closely and he had a bolo?

"A. He was about to hack me I told him not to do it because I was going to leave.

“PROS. TAGUM:

Your Honor, we will object to the testimony of this witness because it is not one of those purposes for which

this witness is being offered in evidence.

“ATTY. CABALTERA:

That is precisely Your Honor part of the mitigating circumstances of sufficient provocation or threat on the part of the offended party that immediately preceded the act.

“COURT:

Let him answer.

“ATTY. CABALTERA:

Okay.

"Q.

What happened next after that?

"A. He was still scolding me. He threatened to hack me.

"Q.

After he threatened to hack you what did you do next if any?

"A.

Now as he was still scolding me and I was getting so much embarrassed now I saw something dark and I shot my father. My vision darkened and I was able to shoot my father.

"Q.

For how many times did you shoot your father?

"A.

Two (2) times.

"Q.

Why two (2) shots?

"A.

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I was not able to control myself."[8]

Nothing in the testimony would suggest the attendance of a kind of unlawful aggression on the part of the victim that can justify appellant's claim of self-defense. A mere perception of an impending attack is not sufficient to constitute unlawful aggression, and neither is an intimidating or threatening attitude.[9]

The trial court correctly appreciated the mitigating circumstance of voluntary surrender. Verily, appellant voluntarily surrendered himself to the authorities shortly after the shooting incident.

Article 246 of the Revised Penal Code, as amended by Republic Act No. 7659, prescribes the penalty of reclusion perpetua to death for the crime of parricide. The attendance of the mitigating circumstance of voluntary surrender justifies the imposition of the lesser penalty.[10]

In addition to the civil liability of P50,000.00, appellant must also be made to account for P50,000.00 moral damages for wounded feelings and moral shock suffered by the heirs of the victim and P25,000.00 exemplary damages on account of relationship, a qualifying circumstance, which was alleged and proved, to the crime of parricide.

WHEREFORE, the decision of the Regional Trial Court of Iriga City, Branch 35, in Criminal Case No. IR-5300, finding DOMINGO ARNANTE y DACPANO guilty of the crime of parricide and sentencing him to suffer the penalty of reclusion perpetua, as well as to pay P50,000.00 civil indemnity, is AFFIRMED with modification in that appellant is likewise hereby ordered to pay P50,000.00 moral damages and P25,000.00 exemplary damages to the heirs of the victim. Costs against appellant.

SO ORDERED.

Davide, Jr., C.J. (Chairman), and Sandoval-Gutierrez, (Special Member, Per Special Order No. 269), J., concur. Ynares-Santiago and Carpio, JJ., on official leave.

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[1] Rollo, p. 6.

[2] Rollo, p. 50.

[3] Rollo, p. 35.

[4] People vs. Real, 308 SCRA 244.

[5] People vs. Tomolin, 311 SCRA 498.

[6] Ibid.

[7] People vs. Ebrada, 296 SCRA 353.

[8] TSN, 26 December 2000, pp. 5-8.

[9] People vs. Langres, 316 SCRA 769.

[10] People vs. Joyno, 307 SCRA 655.

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