PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO DULIN Y NARAG, ACCUSED-APPELLANT.

G.R. No. 171284. June 29, 2015

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

The accused is guilty only of homicide in a prosecution for murder where the record does not substantiate the attendance of treachery. But he may not benefit from the privileged mitigating circumstance of incomplete self-defense if there was no unlawful aggression from the victim.

The Case

Alfredo Dulin y Narag appeals the decision promulgated on August 26, 2005,[1] whereby the Court of Appeals (CA) affirmed with modification his conviction for the murder of Francisco Batulan rendered on December 29, 1997 by the Regional Trial Court (RTC), Branch 3, in Tuguegarao, Cagayan.[2] In convicting him, the RTC had appreciated the privileged mitigating circumstance of incomplete self-defense, and had then sentenced him to "suffer the penalty of reclusion temporal in its maximum period of imprisonment ranging from 17 years and 4 months and 1 day to 20 years." On appeal, the CA prescribed reclusion perpetua.

Antecedents

The information filed on January 7, 1991 averred as follows:

> That on or about August 22, 1990, in the Municipality of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Alfredo Dulin y Narag alias Freddie, armed with a sharp blade(d) instrument, with intent to kill, with evident premeditation and with treachery did then and there willfully, unlawfully and feloniously attack, assault and stab one, Francisco Batulan, inflicting upon him several stab wounds on the different parts of his body which caused his death.
>
> Contrary to law.[3]

During the trial, the Prosecution presented four witnesses, namely: (a) Dr. Nelson Macaraniag, (b) Alexander Tamayao, (c) Romulo Cabalza and (d) Estelita Batulan. Their version follows.

Tamayao was on Tamayao Street in Atulayan Norte, Tuguegarao at about 10:00 o'clock in the evening of August 22, 1990 when a young man came running from the house of Vicente Danao towards the house of Batulan, shouting that his Uncle Totoy (Batulan) had been stabbed. Tamayao rushed towards Danao's house, which was about 30 meters from his own house, and there he saw Dulin stabbing Batulan who was already prostrate face down. Dulin was on top of Batulan, as if kneeling with his left foot touching the ground. Dulin was holding Batulan by the hair with his left hand, and thrusting the knife at the latter with his right hand. Seeing this, Tamayao ran towards Batulan's house to inform Estelita Batulan, the victim's wife who was his aunt, about the incident. He went home afterwards.

Tamayao mentioned of the long standing grudge between Batulan and Dulin, and of seeing them fighting in April 1990. He recalled Dulin uttering on two occasions: He will soon have his day and I will kill him.[4]

Cabalza, a barangay tanod, was in his house around 10:00 o'clock in the evening of August 22, 1990 when he heard the commotion in Danao's house which was facing his house. It was Carolina, Danao's daughter, screaming for help. He thus sought out a fellow barangay tanod. On his return to the scene, he found Batulan at the door of Danao's house, with Dulin wielding a sharp pointed instrument, about 6-7 inches long. Fearing for his safety, he rushed to the Barangay Hall to seek the assistance of Edwin Cabalza and Nanding Buenaflor to bring Batulan to the Provincial Hospital in Carig, Tuguegarao.[5]

Estelita recalled that Tamayao went to her house around 10:00 o'clock in the evening of August 22, 1990 to inform her that Dulin had stabbed her husband in Danao's house. She rushed to Danao's house but fainted on the way. Upon regaining consciousness, she learned that her husband had been rushed to the hospital. On her way to the hospital, she met Barangay Captain Loreto Meman, who told her: Finally, Freddie Dulin killed your husband as he vowed to do. At the hospital, she was told that her husband had sustained two wounds in the back and several stab wounds in the front, and was being attended to at the hospital's intensive care unit (ICU) before he expired.

Estelita said that Barangay Captain Meman went to her husband's wake and repeated what he had said to her about Dulin. But when she later on sought out Barangay Captain Meman to ask him to confirm what he had told her about Dulin's vowing to kill her husband, Barangay Captain Meman's response was: I'm sorry I cannot go and declare what I have stated because I am afraid of FREDDIE and he will kill all those persons who will testify in their favor.[6]

Estelita mentioned of the heated discussion between her husband and his nephew, Seong Bancud, in front of Danao's house in April 1990. On that occasion, Dulin wielded a knife with which he tried to stab her husband. Dulin was pacified only when she went to the aid of her husband, but she then heard Dulin saying: You will soon have your day, I will kill you.[7]

Batulan was attended to at the Cagayan Valley Regional Hospital on August 22, 1990 by Dr. Macaraniag, who said that the victim was in a state of shock from his 12 stab wounds. Dr. Macaraniag was part of the three teams that conducted the surgery on Batulan. He issued the Medico-Legal Certificate[8] attesting that Batulan died on August 24, 1990 at 12:15 a.m.; and that Batulan had sustained several injuries, as follows:

> Multiple stab wounds #12
>
> (1) Lacerated wound, sternum, 1 cm.
> (2) Lacerated wound, 4[th] ICS, 2 cm. MCL
> (3) Lacerated wound, 1 cm. post axillary line
> (4) Lacerated wound, 3 x 2 cm. 3 cm below scapula
> (5) Lacerated wound, 3 cm. lateral aspect, left hand
> (6) Lacerated wound, 3 cm. anterior aspect, left hand
> (7) Lacerated wound, 3 cm. anterior aspect, about 3 cm. from elbow, left
> (8) Lacerated wound, 2 cm. middle third, left forearm
> (9) Lacerated wound, 3 cm. posterior aspect left forearm 4 cm. from left wrist
> (10) Lacerated wound, 3 cm. lateral aspect of left foot
> (11) Lacerated wound, 4 cm. lateral aspect, left thigh
> (12) Lacerated wound, 2 cm. scapular area.
>
> x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x.[9]

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Dr. Macaraniag stated the cause of death to be “Hypovolemic shock secondary to Massive Hemothorax secondary to Multiple stab wounds.”[10] He clarified in court that there were clerical errors in the preparation of the Medico-Legal Certificate because his handwritten records indicated that Batulan had sustained stab instead of lacerated wounds. He surmised that one of the clerks could have misread his handwriting in the process of transcription.[11]

Estelita declared that her late husband had earned a living from buying pigs, deriving a monthly income of P8,000.00; that their marriage bore only one child; that she spent more or less P6,500.00 for Batulan’s hospitalization, including his medicines, and P36,000.00 for Batulan’s 10-day wake, his burial attire and his coffin; that during the wake she butchered one cow worth P6,800.00 and six pigs worth P15,000.00; that his death caused her and her family so much pain; and that she and her family expended a total of P70,000.00, plus the P20,000.00 for the counsel’s services in bringing the criminal charge against Dulin.[12]

In his defense, Dulin testified that in the evening of August 22, 1990, he was in his house in Atulayan Norte, Tuguegarao, Cagayan with Doming Narag, Imelda Danao, Jun Danao, Carolina Dulin and Caridad Narag; that Nicanor Annariao and Raymund Soriano arrived at his house to see the fighting cocks being sold by Alberto Eugenio (Alberto); that Alberto was not yet around, arriving only at about 8:00 o’clock in the evening to talk with Raymund and Nicanor about the price of the fighting cocks; that after their transaction, Alberto served Nicanor and Raymund food, and he (Dulin) and Jun Danao thereafter accompanied Raymund and Nicanor to the highway to get a tricycle ride, but on their way, they passed Angel Bancud who called out to him: that he (Dulin) asked the others to go ahead, and he would just catch up with them; that as he (Dulin) approached Bancud, Batulan, the cousin of his (Dulin) mother, stabbed him on the right side of his body and in the left hand; that he complained to Batulan: Uncle, you hit me (Dinisgrasya nakun), but Batulan replied: I will really kill you; that he (Dulin) ran to the upper level of Carolina Danao’s house, pursued by Batulan who stabbed him again several times; that they grappled for the weapon until he (Dulin) was able to wrest it from Batulan; that he (Dulin) stabbed Batulan with the weapon, and they struggled until he (Dulin) felt weak, eventually falling to the ground; and that he (Dulin) regained consciousness only the next day at the hospital.

Dulin insisted that there was no grudge between him and Batulan, but interjected that the barangay captain would summon him to bring Batulan home each time the latter got drunk at night.

Erlinda Danao, Records Officer of the Cagayan Valley Regional Hospital in Tuguegarao, Cagayan, authenticated the hospital records showing that Dulin had also been injured.[13]

Judgment of the RTC

On December 29, 1997, the RTC rendered its decision convicting Dulin of murder,[14] to wit:

> WHEREFORE, judgment is hereby rendered finding the accused Alfredo Dulin guilty beyond reasonable doubt of the crime of Murder, and appreciating the privileged mitigating circumstance of incomplete self-defense and no aggravating circumstance, this Court hereby lowers the penalty of said crime by two degrees and hereby sentences him to suffer the penalty of reclusion temporal in its maximum period of imprisonment ranging from 17 years and 4 months and 1 day to 20 years and to indemnify the heirs of the victim in the amount of P50,000.00 and to pay actual damages in the amount of P36,000.00 and moral damages for P40,000.00.
>
> Without subsidiary imprisonment in case of insolvency and without pronouncement as to costs.
>
> SO ORDERED.[15]

Decision of the CA

In his appeal, Dulin contended that his crime should be homicide instead of murder, considering the RTC's appreciation of incomplete self-defense as a privileged mitigating circumstance; and that even if self-defense should be unavailing, he could be found guilty only of homicide because it was the victim who had first attacked by stabbing him, and that the multiple wounds inflicted on the victim did not mean that he had not been justified in killing the victim. He argued that the penalty imposed on him was incorrect considering the absence of any aggravating circumstance and the presence of the privileged mitigating circumstance of incomplete self-defense.

On August 26, 2005, the CA affirmed the conviction subject to the modification of the civil liability, decreeing:

> The Court agrees with the OSG representing the State that the penalty requires modification. The Court a quo committed error in the imposition of the proper penalty. The crime committed by appellant in the case at bench is murder qualified by treachery. There being no aggravating and no mitigating circumstance, the proper penalty is reclusion perpetua. Where no mitigating or aggravating circumstance attended the commission of the crime, the medium period of the imposable penalty, which is reclusion perpetua, should be imposed by the trial court.
>
> WHEREFORE, the judgment of conviction is hereby AFFIRMED subject to the modification of the penalty and awards of damages. Appellant ALFREDO DULIN y NARAG is hereby sentenced to suffer the penalty of reclusion perpetua. The award of P36,000 actual damages is DELETED. Appellant is ordered to pay the heirs of Francisco Batulan P20,000 as temperate damages and P50,000 by way of moral damages.
>
> SO ORDERED.[16]

On January 12, 2006, the CA denied Dulin's motion for reconsideration.[17]

Issues

In this appeal, Dulin submits the following issues for our review and consideration, to wit:

> I
>
> WHETHER OR NOT THE COURT OF APPEALS ERRED IN FAILING TO APPRECIATE THE PRESENCE OF THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE DESPITE CLEAR AND CONVINCING EVIDENCE SHOWING THE ELEMENTS OF SELF-DEFENSE.
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> II
>
> WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT CONSIDERING SELF-DEFENSE AS A PRIVILEGED MITIGATING CIRCUMSTANCE, IN THE EVENT THAT THE APPRECIATION OF A COMPLETE SELF-DEFENSE IS UNAVAILING.
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> III
>
> WHETHER OR NOT THE COURT OF APPEALS ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY IN THE KILLING OF FRANCISCO.[18]

Ruling of the Court

The appeal is partly meritorious.

I.

There was no self-defense

The accused who pleads self-defense admits the authorship of the crime. The burden of proving self-defense rests entirely on him, that he must then prove by clear and convincing evidence the concurrence of the following

elements of self-defense, namely: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) lack of sufficient provocation on the part of the person defending himself.[19] The most important of all the elements is unlawful aggression,[20] which is the condition sine qua non for upholding self-defense as a justifying circumstance. Unless the victim committed unlawful aggression against the accused, self-defense, whether complete or incomplete, should not be appreciated, for the two other essential elements of self-defense would have no factual and legal bases without any unlawful aggression to prevent or repel.

Unlawful aggression as the condition sine qua non for upholding self-defense is aptly described in People v. Nugas,[21] as follows:

> Unlawful aggression on the part of the victim is the primordial element of the justifying circumstance of self-defense. Without unlawful aggression, there can be no justified killing in defense of oneself. The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat. Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful.
>
> Unlawful aggression is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot.

Dulin argues that the CA should have appreciated the justifying circumstance of self-defense in his favor because all its elements had been present in the commission of the crime.

In rejecting Dulin's argument, the CA observed that although Batulan had initiated the attack against Dulin the unlawful aggression from Batulan effectively ceased once Dulin had wrested the weapon from the latter. The CA thus found and held in its assailed decision:

> Appellant testified that after the initial stabbing attack on him, he was able to take possession of the weapon and ran towards the second level of the house of Vicente Danao, away from FRANCISCO. At that point, the unlawful aggression against him effectively ceased. When FRANCISCO and appellant again grappled for possession of the weapon, appellant now became the armed protagonist, and FRANCISCO's act of trying to wrest the weapon cannot be considered as unlawful aggression. At that moment, appellant no longer faced any imminent or immediate danger to his life and limb from FRANCISCO.
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> x x x x x x x x x
>
> From the foregoing, it is evidently clear that FRANCISCO could no longer be considered as unlawful aggressor. Appellant had nothing to repel. Therefore, appellant's theory that he was merely defending himself when he killed FRANCISCO is unavailing. A fortiori, there would be no basis for the second requisite of self-defense.[22]

We uphold the finding and holding of the CA. Batulan, albeit the initial aggressor against Dulin, ceased to be the aggressor as soon as Dulin had dispossessed him of the weapon. Even if Batulan still went after Dulin despite the latter going inside the house of Danao, where they again grappled for control of the weapon, the grappling for the

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weapon did not amount to aggression from Batulan for it was still Dulin who held control of the weapon at that point. Whatever Dulin did thereafter – like stabbing Batulan with the weapon – constituted retaliation against Batulan. In this regard, retaliation was not the same as self-defense. In retaliation, the aggression that the victim started already ceased when the accused attacked him, but in self-defense, the aggression was still continuing when the accused injured the aggressor.[23] As such, there was no unlawful aggression on the part of Batulan to justify his fatal stabbing by Dulin.

Still, Dulin vigorously insists that the initial aggression employed by Batulan did not cease because the latter followed him into Danao's house with the singular purpose of ending his life; and that there was no gap in the aggression initiated by Batulan.[24]

The insistence is unwarranted. Dulin admitted having successfully disarmed Batulan and then running away from him. With the aggression by Batulan having thereby ceased, he did not anymore pose any imminent threat against Dulin. Hence, Batulan was not committing any aggression when Dulin fatally stabbed him.

It is notable, too, that the results of the medico-legal examination indicating Batulan to have sustained twelve stab wounds[25] confirmed the cessation of the attack by Batulan. The numerosity and nature of the wounds inflicted by the accused reflected his determination to kill Batulan, and the fact that he was not defending himself.[26]

II.

Incomplete self-defense was not proved

Pursuant to Article 69 of the Revised Penal Code, the privileged mitigating circumstance of incomplete self-defense reduces the penalty by one or two degrees than that prescribed by law. For this purpose, the accused must prove the existence of the majority of the elements for self-defense, but unlawful aggression, being an indispensable element, must be present. Either or both of the other requisites may be absent, namely: reasonable necessity of the means employed to prevent or repel it, or the lack of sufficient provocation on the part of the person defending himself.[27]

Dulin posits that the totality of circumstances indicated that his acts constituted incomplete self-defense, and must be appreciated as a privileged mitigating circumstance.[28]

Dulin's position is untenable. Like in complete self-defense, Dulin should prove the elements of incomplete self-defense by first credibly establishing that the victim had committed unlawful aggression against him. With Batulan's aggression having already ceased from the moment that Dulin divested Batulan of the weapon, there would not be any incomplete self-defense. Moreover, as borne out by his stabbing of Batulan several times, Dulin did not act in order to defend himself or to repel any attack, but instead to inflict injury on Batulan.

III.

The RTC and CA erred in appreciating the attendance of treachery

Murder is the unlawful killing of any person attended by any of the circumstances listed Article 248 of the Revised Penal Code. Treachery, which was alleged in the information, is one such qualifying circumstance.

There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make.[29] Two conditions must concur in order for treachery to be appreciated, namely: one, the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and two, said means,

methods or forms of execution were deliberately or consciously adopted by the assailant.[30] Treachery, whenever alleged in the information and competently and clearly proved, qualifies the killing and raises it to the category of murder.[31]

Based on the established facts, Dulin and Batulan grappled for control of the weapon Batulan had initially wielded against Dulin, who divested Batulan of it and ran with it into the house of Danao, with Batulan in immediate pursuit. They continued to grapple for the weapon inside the house of Danao, and it was at that point when Dulin stabbed Batulan several times. Under the circumstances, treachery should not be appreciated in the killing of Batulan because the stabbing by Dulin did not take Batulan by surprise due to his having been sufficiently forewarned of Dulin's impending assault,[32] and being thus afforded the opportunity to defend himself, or to escape, or even to recover control of the weapon from Dulin. The essence of treachery is that the attack comes without warning, or is done in a swift, deliberate and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape, without the slightest provocation on the part of the victim.[33] The mode of attack must not spring from the unexpected turn of events.

Consequently, Dulin should be liable only for homicide, the penalty for which is reclusion temporal.[34] There being no aggravating or mitigating circumstances, the penalty is imposed in its medium period (i.e., 14 years, eight months and one day to 17 years and four months). The indeterminate sentence of Dulin is, therefore, eight years and one day of prision mayor, as the minimum, to 14 years, eight months and one day of reclusion temporal, with full credit of his preventive imprisonment, if any.

Anent the civil liability, the CA ordered the accused to pay to the heirs of Batulan P20,000.00 as temperate damages and P50,000.00 as moral damages. We modify the awards, and grant to the heirs of Batulan P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as temperate damages. Indeed, the current judicial policy sets the civil indemnity for death caused by a crime at P50,000.00. In addition, the heirs of the victim are entitled to moral damages of P50,000.00. The civil indemnity and moral damages are allowed even without allegation and proof, it being a certainty that the victim's heirs were entitled thereto as a matter of law. Temperate damages of P25,000.00 should further be granted to the heirs of the victim for they were presumed to have spent for his interment. It would be unjust to deny them this amount for the reason that they were not able to establish the actual expenditure for his interment with certainty.[35]

In line with recent jurisprudence,[36] interest of 6% per annum shall be charged on all the items of the civil liability fixed and imposed herein, computed from the date of the finality of this decision until the items of the civil liability shall be fully paid.

WHEREFORE, the Court MODIFIES the judgment promulgated on August 26, 2005 by finding ALFREDO DULIN Y NARAG guilty beyond reasonable doubt of HOMICIDE, and SENTENCES him to suffer the indeterminate sentence of EIGHT YEARS AND ONE DAY OF PRISION MAYOR, AS THE MINIMUM, TO 14 YEARS, EIGHT MONTHS AND ONE DAY OF RECLUSION TEMPORAL, with full credit of his preventive imprisonment; ORDERS him to pay to the heirs of Francisco Batulan P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as temperate damages, plus interest of 6% per annum on each item reckoned from the finality of this decision until full payment; and DIRECTS him to pay the costs of suit.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-De Castro, Perez, and Perlas-Bernabe, JJ., concur.

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[1] Rollo, pp. 33-56; penned by Associate Justice Japar B. Dimaampao, with the concurrence of Associate Justice

Renato C. Dacudao (retired) and Associate Justice Edgardo F. Sundiam (retired/deceased).

[2] CA rollo, pp. 21-30; penned by Judge Loreto Cloribel-Purugganan.

[3] Rollo, pp. 33-34.

[4] Id. at 35-36.

[5] Id. at 36.

[6] Id. at 37.

[7] Id.

[8] Records, p. 8.

[9] Records, pp. 8-11.

[10] Records, p. 213.

[11] Rollo, p. 35.

[12] Id. at 37.

[13] Id. at 39.

[14] Supra note 2.

[15] Id. at 30.

[16] Rollo, p. 55.

[17] Id. at 57-58.

[18] Id. at 13-14.

[19] Rimano v. People, G.R. No. 156567, November 27, 2003, 416 SCRA 569, 576.

[20] People v. Dolorido, G.R. No. 191721, January 12, 2011, 639 SCRA 496, 503.

[21] G.R. No. 172606, November 23, 2011, 661 SCRA 159, 167-168.

[22] Supra note 1, at 41-44.

[23] People v. Gamez, G.R. No. 202847, October 23, 2013, 708 SCRA 625, 636.

[24] Rollo, p. 20.

[25] Id. at 121.

[26] Sienes v. People, G.R. No. 132925, December 13, 2006, 511 SCRA 13, 25.

[27] Mendoza v. People, G.R. No. 139759, January 14, 2005, 448 SCRA 158, 161-162.

[28] Rollo, p. 26.

[29] Article 14, paragraph 16, Revised Penal Code.

[30] People v. Flores, G.R. No. 137497, February 5, 2004, 422 SCRA 91, 97.

[31] People v. Sarabia, G.R. No. 106102, October 29, 1999, 317 SCRA 684, 694.

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[32] People v. Placer, G.R. No. 181753, October 9, 2013, 707 SCRA 199, 210.

[33] People v. Warriner, G.R. No. 208678, June 16, 2014, 726 SCRA 470, 479.

[34] Article 249, Revised Penal Code.

[35] See People v. Isla, G.R. No. 199875, November 21, 2012, 686 SCRA 267, 283.

[36] Sison v. People, G.R. No. 187229, February 22, 2012, 666 SCRA 645, 667.

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