

ANTONIO A. SOMBILON, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 177246. September 25, 2017

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

"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." [1]

The Case

Under review is the decision promulgated on March 28, 2007, [2] whereby the Court of Appeals (CA) affirmed the conviction of the petitioner for homicide by the Regional Trial Court (RTC), Branch 82, in Odiongan, Romblon in relation to the fatal shooting of the late Gerardo F. Amerilla on November 18, 1997. [3] The CA disposed as follows:

WHEREFORE, premises considered, the Appeal is hereby DENIED and the assailed Decision of the court a quo is AFFIRMED with MODIFICATION, imposing upon the Appellant, ANTONIO SOMBILON, the indeterminate prison term of Eight (8) Years of Prison Mayor, as minimum, to Fourteen (14) Years and Eight (8) Months of Reclusion Temporal, as maximum.

SO ORDERED. [4]

Antecedents

On February 2, 1998, the Office of the Provincial Prosecutor of Romblon charged the petitioner with homicide under the following information, alleging:

That on or about the 18[th] day of November, 1997, at around 7:30 o'clock in the evening, in barangay Lanas, municipality of San Jose, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot with a caliber .45 pistol, one GERARDO F. AMERILLA, inflicting upon the latter gunshot wounds in different parts of his body which caused his untimely death.

Contrary to law. [5]

Version of the Prosecution

At around 7:00 p.m. in the evening of November 18, 1997, Nelson Andres (Andres) was resting in the terrace of his house in Lanas, San Jose, Romblon when he noticed somebody passing through the gate. Instantly, he was startled by a gunshot, and he got up to see what was happening. It was then when he saw the person who had passed through the gate, whom he recognized to be the petitioner. The latter was pointing a gun at him, forcing him to nervously enter his house, shut the door behind him, turn off the lights and go upstairs together with his

wife and daughter. Once inside his upstairs room, he peeked through the window and saw the petitioner striding back and forth in front of his house, shouting and firing his gun every now and then.[6]

Meanwhile, the late SPO3 Gerardo Amerilla (Amerilla) and others, namely: Napoleon Martin (Martin), Jemuel[7] Agustin (Agustin), Quennie Sacapaño and Edmund Escalante, were in the house of Martin also located in Lanas when they heard three gunshots being fired. Shortly thereafter, a certain Cris Cajilig came over to inform them that the petitioner was causing a commotion in the place of Andres.

Amerilla immediately left Martin's house,[8] and arrived in front of the house of Andres by around 7:30 p.m.[9] According to Andres, Amerilla, upon arriving at his house, asked the petitioner what his problem was all about, but the latter instantly fired his gun twice at Amerilla and the latter fell face down to the ground. Amerilla crawled towards the gate of Andres' house seeking his help, but no one could approach him because the petitioner stayed around for about 25 meters and prevented others from going to the victim's aid.[10] Andres had a clear view of what transpired because of the illumination from a fluorescent lamp about 12 meters from where the victim was shot.[11]

On his part, Agustin went to the house of Ulpiano Enrique right after Amerilla left the house of Martin. When Ulpiano told him that Amerilla had been shot, he returned to Martin's house and told the others about the shooting. On his way home, he found Amerilla lying in front of Andres' house. He approached Amerilla and held the latter's head and shoulder as he asked who had shot him. Amerilla pointed at the petitioner,[12] who was then around 12 meters away from them.[13] Realizing that Amerilla urgently needed medical help, he went back to Martin's house to tell the others that Amerilla must be brought to the hospital. Agustin and the others rushed to the house of Enrique to request his assistance in talking to the petitioner not to hurt them while they attempt to help Amerilla. Agustin recalled that when they were finally able to get near the fallen Amerilla, they found that he had already expired. On his part, Agustin proceeded to the police station and reported the fatal incident.[14] Two police officers, PO2 Jose Sungcang, Jr. and PO2 Constantino Rufon, went to Lanas to investigate.[15] With the help of Gerardo Enrique, the police officers boarded the body of Amerilla into a vehicle and brought it to the hospital for autopsy.[16]

Dr. Ederlina Aguirre, the Chief of the San Jose District Hospital in San Jose, Romblon, conducted the autopsy. She found three gunshot wounds located at the victim's left ring finger, upper left part of the abdomen and lower part of his umbilical cord. She attested that a bullet had perforated the victim's large and small intestines,[17] but she opined that immediate medical attention could have saved his life.[18]

The State also presented Marlon Alam who claimed that he had been contracted by the petitioner to kill Amerilla and Mayor Filipino Tandog of San Jose, Romblon; that the petitioner had given to him for that purpose a .357 caliber revolver and promised to pay P20,000.00 for the killing of Amerilla; that because he had not brought the gun on the night of the shooting of Amerilla, the petitioner had directed him to just stay in front of his house and to look out for Amerilla; and that the petitioner had spent two magazines-full of bullets in shooting Amerilla.[19]

Version of the Defense

The petitioner, then the barangay chairman of Lanas, San Jose, Romblon, admitted shooting Amerilla but insisted that he had done so in self-defense. He narrated that upon arriving home in Lanas at around 7:20 p.m. on November 18, 1997, he found several of his constituents complaining about the selective lighting by the Tablas Island Electric Cooperative, Inc. (TIELCO); that as the barangay chairman, he had assured the complainants that he would address their concern by talking to Andres, the President of the Barangay Power Association (BAPA); that he had thus gone to see Andres at his house; that after airing the matter of selective lighting, Andres had appeared irritated and remarked that his decision as the BAPA President should prevail; and that because of the

remarks of Andres, he had decided to leave after telling Andres that they would talk about the matter again the next day.[20]

The petitioner testified that as he was about to exit through the gate of Andres, he was alarmed because he saw a person some 15 to 20 meters away aiming and firing a gun at him; that fearing for his own life, he had drawn his .45 caliber firearm and fired twice at his assailant;[21] that after doing so, he had run home;[22] that he had not recognized his assailant at the time because the place was too dark because all the lights had been shut off; that upon reaching his house, he had sought out Gerardo Enrique, a barangay kagawad, to instruct the latter to bring a lamp and to use his motorboat to transport the assailant to the hospital;[23] that he had learned afterwards from one Michael Sombilon that the person he had shot was Amerilla;[24] and that he went to Looc, Romblon the next morning to surrender himself to the police.[25]

The Defense also presented Bienvenida Alam, Roque Ignacio and Rogelio Venus. Their collective testimony was that they were watching a movie at the house of the petitioner when they heard two gunshots followed by two more; and that after the last two gunshots, the petitioner had rushed inside the house and gone upstairs.[26]

Judgment of the RTC

On March 3, 2005, the RTC rendered its judgment finding and declaring the petitioner guilty of homicide mitigated by the circumstance of voluntary surrender,[27] decreeing:

WHEREFORE, premises considered, accused ANTONIO SOMBILON is found GUILTY beyond reasonable doubt of the crime of HOMICIDE. Appreciated in his favor is a mitigating circumstance of voluntary surrender and with no aggravating circumstance. He is hereby sentence[d] to suffer the penalty of Reclusion Temporal in its minimum period, which is TWELVE YEARS (12) AND ONE (1) DAY to FOURTEEN (14) YEARS AND EIGHT MONTHS. He is likewise ordered to pay actual damages in the amount of SEVENTY FIVE THOUSAND PESOS (P75,000.00) and moral damages in the amount of FIFTY THOUSAND PESOS (P50,000.00).

SO ORDERED.[28]

The RTC doubted the petitioner's plea of self-defense because the gun the victim had supposedly fired at him had not been recovered. It is considered to be contrary to human experience that the petitioner should run home instead of towards his fallen victim to find out who his assailant had been if he had really acted in self-defense, he being the barangay chairman of the place. It made the following cogent observations:

A scrutiny of the evidences (sic) on record, it appeared that what actually transpired was that accused went to the house of Nelson Andres to confront him relative to the complaint of other residents who were not yet provided with electricity by the BAPA, the latter being the President thereof. A verbal tussle ensued. Accused fired his gun while walking back and forth of the house of Nelson Andres to scare the latter. The victim, after hearing gunshots, being a policeman, responded, and when he confronted the accused, he was shot twice.

If the victim was the one who shot the accused first, why is it that not one of the several witnesses testified that a gun was recovered at the scene of the crime. Likewise, if accused merely retaliated after he was shot once by the victim and acted in self-defense, why did he immediately run to his house and not to the fallen victim, which he claims, he did not recognize, he being the Brgy.Chairman of the place. He had to summon somebody else, to identify the man he shot and to bring him to the hospital if alive.[29]

Decision of the CA

On appeal, the CA upheld the judgment of the RTC because the petitioner had not established his plea of self-defense, particularly the existence of the primordial element of unlawful aggression on the part of the victim,

cogently stating:

Unlawful aggression is the first and primordial element of self--defense. Of the three requisites, it is the most important. Without it, the justifying circumstance cannot be successfully invoked. If there is no unlawful aggression, there is nothing to prevent or repel. Unlawful aggression refers to an attack or a threat to attack, positively showing the intent of the aggressor to cause injury. It presupposes not merely a threatening or an intimidating attitude, but an actual, sudden and unexpected attack or an imminent danger thereof, which imperils one's life or limb. Thus, when there is no peril, there is no unlawful aggression.

It now becomes very material to ascertain whether or not the Victim was the unlawful aggressor? We answer this question in the negative. It bears stressing that, aggression, to be unlawful, must be actual and imminent, such that there is a real threat of bodily harm to the person resorting to self-defense. The recorded evidence in this case would depict clearly the absence of unlawful aggression on the part of the Victim.

Curiously, the Appellant did not even bother to discuss nor elucidate in his brief filed before this Court the existence of the elements of self-defense and their proper application in the instant case to justify his act.[30]

Nonetheless, the CA concluded that the RTC erred in ignoring the provisions of the Indeterminate Sentence Law in fixing the minimum of the indeterminate sentence, and revised the penalty to imprisonment of eight years of prison mayor, as the minimum, to 14 years and eight months of reclusion temporal, as the maximum.

Hence, this appeal, in which the petitioner submits that:

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW WHEN IT AFFIRMED THE CONVICTION OF THE PETITIONER, CONSIDERING THAT THE DEFENSE WAS ABLE TO PROVE THAT THE PETITIONER ACTED IN SELF-DEFENSE WHEN HE SHOT THE DECEASED.

The petitioner posits that he established the concurrence of the elements of self-defense; and that Amerilla's very act of aiming his gun and shooting at him without any reason clearly constituted unlawful aggression.

In contrast, the Office of the Solicitor General (OSG) maintains that the present recourse was inappropriate considering that the petitioner thereby raises factual questions that were not within the province of a petition for review on certiorari under Rule 45 of the Rules of Court; and that both the RTC and the CA correctly ruled out self-defense in view of the eyewitness account of Andres and the findings of Dr. Aguirre.

Did the petitioner prove his having acted in self-defense in fatally shooting Amerilla?

Ruling of the Court

The appeal lacks merit.

The petitioner's admission of fatally shooting Amerilla required him to establish his plea of self-defense with clear and convincing evidence. This is because his admission of the killing required him to rely on the strength of his own evidence, not on the weakness of the Prosecution's evidence, which, even if it were weak, could not be disbelieved in view of his admission.[31]

Thus, the petitioner had to prove that the following elements of self--defense were present, namely: (1) the victim committed unlawful aggression amounting to actual or imminent threat to the life and limb of the person claiming self-defense; (2) there was reasonable necessity in the means employed to prevent or repel the unlawful aggression; and (3) there was lack of sufficient provocation on the part of the person claiming self-defense or at least any provocation executed by the person claiming self-defense was not the proximate and immediate cause of the victim's aggression.[32]

In *People v. Nugas*,[33] the Court discoursed on the need for unlawful aggression to pose a real peril on the life or

personal safety of the person defending himself, and its indispensability as an element of self-defense in the following manner:

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. (Bold underscoring supplied for emphasis)

The petitioner manifestly did not discharge his burden. He did not persuasively show that Amerilla had committed unlawful aggression against him as to endanger his life and limb. The petitioner's insistence that Amerilla had been the first to aim and fire his gun remained uncorroborated. Verily, the claim of unlawful aggression on the part of the victim was also weak due mainly to the failure to recover the victim's alleged gun in the place where the shooting happened during the ensuing investigation.[34] Moreover, that the petitioner allegedly retaliated in his defense by firing his own gun after the victim had supposedly fired at him once was rendered improbable by his immediately running away from the scene of the shooting and fleeing towards his house instead of going towards the victim whom he professed not to have then recognized. The improbability rested on his being the incumbent barangay chairman of the place, and, as such, had the heavy responsibility of keeping the peace and maintaining order thereat. More telling was the established fact that even before Amerilla came around the petitioner had already been firing his gun in order to scare Andres. The very reason for Amerilla's going to the house of Andres was to try to pacify the troublemaking of the petitioner. The belligerent conduct of the petitioner manifested a predisposition for aggressiveness on his part instead of on the part of the victim.

Bereft of the proof of unlawful aggression on the part of Amerilla, the petitioner's plea for self-defense, complete or incomplete, could not be accorded credence and weight.[35] Hence, the CA and the RTC justifiably rejected his plea.

Anent the penalty, both lower courts appreciated the mitigating circumstance of voluntary surrender in favor of the petitioner. Their appreciation is upheld considering that the petitioner voluntarily surrendered himself to the police authorities in Looc, Romblon on the morning following the shooting. Voluntary surrender is a mitigating circumstance in his favor, and reduces the penalty to the minimum period. Accordingly, the penalty of reclusion temporal, which Article 249 of the Revised Penal Code prescribes for homicide, is imposed in its minimum period, which ranges from 12 years and one day to 14 years and eight months. In its decision, however, the CA meted the indeterminate sentence of eight years of prision mayor, as the minimum, to 14 years and eight months of reclusion temporal, as the maximum. Such imposition of the ceiling of the minimum period of reclusion temporal as the maximum without the CA explaining the reason why was unwarranted under the law. The explanation was necessary in order to comply with the seventh rule enunciated in Article 64 of the Revised Penal

Code on the application of penalties containing three periods. As the Court has observed in *Ladines v. People*:^[36]

x x x although Article 64 of the Revised Penal Code, which has set the rules "for the application of penalties which contain three periods," requires under its first rule that the courts should impose the penalty prescribed by law in the medium period should there be neither aggravating nor mitigating circumstances, its seventh rule expressly demands that "[w]ithin the limits of each period, the courts shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime." By not specifying the justification for imposing the ceiling of the period of the imposable penalty, the fixing of the indeterminate sentence became arbitrary, or whimsical, or capricious. In the absence of the specification, the maximum of the indeterminate sentence for the petitioner should be the lowest of the medium period of reclusion temporal, which is 14 years, eight months and one day of reclusion temporal. (Bold underscoring supplied for emphasis; italicized portions are part of the original text)

Accordingly, the correct indeterminate sentence to be meted on the petitioner should be eight years of prison mayor, as the minimum, to 12 years and one day of reclusion temporal, as the maximum.

The RTC awarded P75,000.00 as civil indemnity and P50,000.00 as moral damages. The CA affirmed the awards. We hold, however, that such awards should conform to the policy pronouncements in *People v. Jugueta*,^[37] which grants 50,000.00 each as civil indemnity and moral damages to the heirs of the victim in homicide. In addition, the lower courts should have granted temperate damages in lieu of actual damages incurred for the burial of the victim in default of reliable proof of the actual expenses incurred. That the heirs of the victim sustained pecuniary loss from his death but the exact amount could not be proved entitled them to temperate damages,^[38] the amount for which shall be P25,000.00.^[39] Based on Article 2224 of the Civil Code, temperate damages can be recovered when some pecuniary loss has been suffered but its amount cannot be proved with certainty.^[40] The accused shall pay interest of 6% per annum on all such amounts from the time of finality of this decision until full satisfaction.

ACCORDINGLY, the Court DENIES the petition for review on certiorari; AFFIRMS the decision promulgated on March 27, 2007 upholding with modification the decision rendered on March 3, 2005 by Regional Trial Court, Branch 82, in Odiongan, Romblon, subject to the further MODIFICATION that: (1) the indeterminate sentence of the petitioner is eight years of prison mayor, as the minimum, to 12 years and one day of reclusion temporal, as the maximum; (2) the petitioner shall pay to the heirs of the late Gerardo F. Amerilla the sums of P50,000.00 for civil indemnity; P50,000.00 for moral damages; and P25,000.00 as temperate damages, plus interest of 6% per annum on all such sums from the time of finality of this decision until full satisfaction; and (3) the petitioner shall pay the costs of suit.

SO ORDERED.

Velasco, Jr., Leonen, Martires, and Gesmundo, JJ., concur.

October 11, 2017

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on September 25, 2017 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on October 11, 2017 at 9:30 p.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

- [1] People v. Nugas, G.R. No. 172606, November 23, 2011, 661 SCRA 159.
- [2] Rollo, pp. 25-45; penned by Associate Justice Myrna Dimaranan Vidal, with the concurrence of Associate Justice Jose L. Sabio, Jr. and Associate Justice Jose C. Reyes, Jr.
- [3] Id. at 131-137; penned by Executive Judge B. Marco Vedasto.
- [4] Id. at 44-45.
- [5] Id. at 103.
- [6] TSN dated September 8, 1998, pp. 5-8.
- [7] Sometimes spelled as "Jemwel" or "Jimwel" in the transcript, TSN dated September 8, 1998, pp. 6-7.
- [8] Testimony of Jemuel Agustin, TSN dated September 8, 1998, pp. 3-5.
- [9] Testimony of Nelson Andres, TSN dated September 8, 1998, p. 8.
- [10] Id. at 8-11.
- [11] Id. at 18-20.
- [12] Testimony of Jemuel Agustin, TSN dated September 8, 1998, pp. 15-17.
- [13] Testimony of Jemuel Agustin, TSN dated October 15, 1998, p. 18.
- [14] Testimony of Jemuel Agustin, TSN dated September 8, 1998, pp. 7-8.
- [15] TSN dated March 9, 1999, p. 8.
- [16] Testimony of PO2 Jose Sungcang, Jr., TSN dated March 8, 1999, p. 7.
- [17] Post-Mortem Examination Report, Exhibit Folder for the Prosecution, p. 144.
- [18] Testimony of Dr. Ederlina Aguirre, TSN dated July 19, 1999, p. 11.
- [19] Testimony of Marlon Alam, TSN dated July 23, 1998, pp. 8-14.
- [20] Testimony of Antonio Sombilon, TSN dated December 19, 2000, pp. 13-19.
- [21] Id. at 19-21.
- [22] Id. at 25.
- [23] Id. at 28.
- [24] Id. at 29.
- [25] Id. at 30-31.

[26] See testimony of Bienvenida Alam, TSN dated October 21, 1999, pp. 3-4; testimony of Roque Ignacio, TSN dated July 25, 2000, pp. 11-12; Rogelio Venus testified, however, that after he heard many shots, Sombilon came running towards his house and went up straight to the second floor (TSN dated December 18, 2000, p. 9).

[27] Rollo, pp. 103-109.

[28] Id. at 109.

[29] Id. at 136-137.

[30] Id. at 40-41.

[31] *People v. Tanduyan*, G. R. No. 108784, September 13, 1994, 236 SCRA 433, 439; *People v. Quiño*, G.R. No. 105580, May 17, 1994, 232 SCRA 400, 403; *People v. Molina*, G.R. No. 59436, August 28, 1992, 213 SCRA 52, 64; *People v. Dorico*, G.R. No. L-31568, November 29, 1973, 54 SCRA 172, 184.

[32] *Razon v. People*, G.R. No. 158053, June 21, 2007, 525 SCRA 284, 297; *Garong v. People*, G.R. No. 148971, November 29, 2006, 508 SCRA 446, 456.

[33] *Supra*, note 1, at 167-168.

[34] The petitioner sought to explain the non-recovery of the firearm by assuming that the investigation of the shooting incident by the police authorities could not have been fair towards him because the victim was a police officer. But the CA, calling the assumption by the petitioner "self-serving," observed that the fact that the victim was a police officer himself did not sufficiently prove that police officers involved in the investigation were biased against the petitioner as to have "intentionally suppressed the gun," for bias and partiality could not be presumed; hence, the CA concluded that "said gun never existed, and this explains the failure of the defense to present it before the Court a quo." (see rollo, pp. 42-44; the bold underscoring is supplied for emphasis).

[35] *People v. Dano*, G.R. No. 117690, September 1, 2000, 339 SCRA 515, 531; *David v. Court of Appeals*, G.R. Nos. 111168-69, June 17, 1998, 290 SCRA 727, 743; *People v. Unarce*, G.R. No. 120549, April 4, 1997, 270 SCRA 756, 764.

[36] G.R. No. 167333, January 11, 2016, 778 SCRA 83, 93.

[37] G.R. No. 202124, April 5, 2016, 788 SCRA 331.

[38] *People v. Surongon*, 554 Phil. 448, 458 (2007).

[39] *People v. Jugueta*, *supra*, note 37, at 380-381.

[40] *Ladines v. People*, *supra*, note 36, at 94-95.

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