

DANILO REMEGIO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 196945. September 27, 2017

Ponente: MARTIRES, J.

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MARTIRES, J.:

This is a Petition for Review on Certiorari assailing the Decision,[1] dated 16 September 2008, and Resolution,[2] dated 6 April 2011, of the Court of Appeals (CA) in CA-G.R. CR No. 00312, which affirmed with modification the Decision,[3] dated 16 September 2005, of the Regional Trial Court, Branch 13, Culasi, Antique (RTC), in Criminal Case No. C-358 finding petitioner Danilo Remegio (petitioner) guilty of homicide as defined and penalized under Article 249 of the Revised Penal Code (RPC).

THE FACTS

In an Information, dated 19 November 1999, petitioner was charged with homicide, committed as follows:

That on or about the 12th day of December 1998, in the Municipality of Culasi, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the said accused, being then armed with an illegally possessed firearm, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with said firearm one Felix Sumugat, thereby inflicting upon the latter fatal wound on the vital part of his body which caused his instantaneous death.

Contrary to the provisions of Article 249 of the Revised Penal Code.[4]

Petitioner pleaded not guilty to the crime charged. In the pre-trial conference, the parties stipulated on the fact that petitioner killed Felix Sumugat (Sumugat) on 12 December 1998, at Barangay Jalandoni, Culasi, Antique, without prejudice to petitioner's plea of self-defense.[5] As a result of petitioner's claim of self-defense, the order of trial was reversed.

Version of the Defense

The defense presented petitioner and Diosdado Bermudez (Bermudez) as its witnesses. Their combined testimony tended to establish the following:

Petitioner was the caretaker of a parcel of land belonging to his brother-in-law, Isidro Dubria. The said land was planted with various fruit-bearing trees as well as coconut, mahogany, and ipil-ipil trees.[6] On 12 December 1998, at around nine o'clock in the morning, petitioner heard the sound of a chainsaw. He then saw the victim, Sumugat, cutting the ipil-ipil tree which was uprooted during the typhoon that occurred on the previous day.[7]

Petitioner approached Sumugat. He told him to cut only the branches of the ipil-ipil tree and not its trunk as it would be placed in the warehouse because his in-laws would be arriving from the United States. Sumugat became infuriated and shouted, "You have nothing to do with this. You are only an in-law. I will kill you." He then drew a revolver from his waist and aimed it at petitioner.[8]

Petitioner raised both of his hands and told Sumugat that he would not fight him, but Sumugat repeated that he would kill him. Fearing for his life, petitioner grappled with Sumugat for possession of the gun. He successfully took the gun from Sumugat but the latter picked up the chainsaw, turned it on, and advanced towards petitioner. Petitioner stepped back and shot at the ground to warn Sumugat, but the latter continued thrusting the chainsaw at him. Petitioner parried the chainsaw blade with his left hand, but he lost his balance and accidentally pressed the gun's trigger, thus firing a shot which hit Sumugat in the chest.[9]

Version of the Prosecution

The prosecution presented Bernardo Caduada (Caduada), Hermie Magturo (Magturo), Rolando Dubria, and Dr. Feman Rene M. Autajay as its witnesses. Their combined testimony tended to establish the following:

Petitioner approached Sumugat who was cutting the ipil-ipil tree with the chainsaw.[10] He told Sumugat that if the latter did not desist from cutting the tree, he would shoot him. Sumugat answered that the tree was obstructing the way. Petitioner then drew his gun and fired at Sumugat's direction, but he missed.[11] Sumugat turned on the chainsaw, which provoked petitioner to shoot him on the left foot. Infuriated, Sumugat continued to brandish the chainsaw, but petitioner shot him in the chest.[12] Before he fell down, Sumugat swung the chainsaw, hitting petitioner in the palm. Petitioner then threw the gun into a canal.[13]

Magturo and Caduada executed a Joint Affidavit[14] on 2 February 1999, narrating the incident they witnessed on 12 December 1998. In his direct examination, however, Magturo stated that he did not understand the affidavit's contents at the time of signing.[15] Moreover, he testified that he was unfamiliar with the contents of the said affidavit because he did not witness the incident.[16] On the other hand, Caduada, on cross-examination, affirmed that he executed an Affidavit of Retraction[17] on 9 December 2002, because his conscience bothered him for telling a narration of facts which he did not actually witness.[18]

The RTC Ruling

In its Decision, dated 16 September 2005, the RTC found petitioner guilty beyond reasonable doubt of the crime of homicide. Accordingly, the trial court sentenced him to imprisonment of ten (10) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay the heirs of Sumugat the amount of P300,000.00.

The RTC ruled that the act of petitioner in telling the victim to stop cutting the tree was a provocation on his part. It added that from the moment petitioner wrested the firearm from the victim, his life was already free from any threat coming from the victim. It opined that the firing of the gun was no longer justified as the victim was already unarmed and was already crippled by the gunshot wound he sustained on his left foot. Hence, it concluded that petitioner's evidence in support of his theory of self-defense did not meet the requirements of Article 11 of the RPC. The fallo reads:

WHEREFORE, premises considered, having admitted the killing of Felix Sumugat, accused's evidence in the Record claiming self-defense, being not clear, not credible, not convincing, not justifiable, the Court found the accused guilty of the crime of Homicide which carries an imposable penalty of reclusion temporal, a penalty divisible by three (3) periods. Pursuant to Article 64, paragraph 2 of the Revised Penal Code, there being one mitigating circumstance of voluntary surrender, in relation to the Indeterminate Sentence Law, the Court hereby sentences the accused to an imprisonment often (10) years and one (1) day as minimum, to fourteen (14) years and eight (8) months as maximum. (same being the minimum of Reclusion Temporal) and the Court hereby, pursuant to Article 100 of the Revised Penal Code in relation to Section 1, Rule III of the Rules of Court, further orders the accused Danilo Remegio to indemnify the heirs of Felix Sumugat in the sum of P300,000.00.[19]

Aggrieved, petitioner appealed before the CA. Meanwhile, he was granted provisional liberty pending appeal after putting up a bail bond in the amount of P40,000.00.[20]

The CA Ruling

In a Decision, dated 16 September 2008, the CA affirmed the conviction of petitioner, but modified the penalty imposed to two (2) years and four (4) months of prision correccional, as minimum, to six (6) years and one (1) day of prision mayor, as maximum. It also ordered petitioner to pay the heirs of Sumugat the amounts of P50,000.00 as funeral expenses and P50,000.00 as civil indemnity instead of the P300,000.00 imposed by the trial court.

The CA held that the element of unlawful aggression was present. It observed that the testimonies of petitioner and Bermudez were consistent and supported by the medical certificate evidencing that petitioner sustained wounds in his left hand due to parrying the chainsaw which the victim thrust at him. The appellate court declared that the prosecution's version was hardly believable considering that Caduada retracted his testimony and Magturo admitted that he was not around when the incident happened. It further noted that Rolando Dubria, a 13-year-old child, spoke only on 24 January 2005, or more than six years from the time the incident occurred; and that he was never made to give his account to the police authorities during the investigation stage. The CA also stated that the child admitted on cross-examination that Sumugat was able to inflict wounds on petitioner with the use of the chainsaw.

The appellate court, however, ruled that the element of reasonable necessity of the means employed to repel the aggression is absent. It reasoned that there could have been several ways for petitioner to repel the aggression without having to kill the victim, considering that the latter was already wounded and he held a chainsaw which was difficult to handle.

Finally, the CA adjudged that petitioner's act of telling the victim not to cut the trunk of the uprooted ipil-ipil tree could not be considered provocation. It disposed the case in this wise:

WHEREFORE, the DECISION of the Regional Trial Court Branch 13, Culasi, Antique in Criminal Case No. C-358, convicting accused-appellant of HOMICIDE is hereby AFFIRMED but with the following modifications:

- HE IS SENTENCED TO SUFFER THE INDETERMINATE PENALTY OF 2 YEARS AND 4 MONTHS OF PRISION CORRECCIONAL AS MINIMUM, TO 6 YEARS AND 1 DAY OF PRISION MAYOR AS MAXIMUM;
- HE IS DIRECTED TO PAY THE HEIRS OF FELIX SUMUGAT THE FOLLOWING SUMS:
- FIFTY THOUSAND PESOS (P50,000.00) AS FUNERAL EXPENSES;
- FIFTY THOUSAND PESOS (P50,000.00) AS CIVIL INDEMNITY.[21] (emphasis in the original)

Unconvinced, petitioner moved for reconsideration but the same was denied by the CA in a Resolution, dated 6 April 2011.

Hence, this petition.

ISSUE

WHETHER PETITIONER IS ENTITLED TO INVOKE THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE.

Petitioner argues, citing *US. v. Molina*,[22] that the person attacked is not duty bound to expose himself to be

wounded or killed and while the damages to his person or life subsist, he has a perfect and indisputable right to repel such danger by wounding his adversary, to disable him completely, so that he may not continue the assault; and that from the inception of the incident, until it ended, the victim did not desist from attacking the petitioner, hence, the attending circumstance of reasonable necessity of the means employed is present.[23]

In its Comment,[24] the Office of the Solicitor General avers that the petition, anchored on the claim of self-defense, merely raises a pure question of fact which had already been rejected by both the trial and the appellate courts, hence, it should be denied outright.

In his Reply,[25] petitioner counters that reasonableness of the means employed does not depend on the harm done, but upon the reality and imminence of the danger or injury to the person defending himself; and that one who is persistently assaulted by another cannot be expected to act in a normal manner, and to follow the normal processes of reasoning, and weigh the necessity of employing a certain means of defense.

THE COURT'S RULING

Self-defense, when invoked as a justifying circumstance, implies the admission by the accused that he committed the criminal act. Generally, the burden lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt rather than upon the accused that he was in fact innocent. When the accused, however, admits killing the victim, it is incumbent upon him to prove any claimed justifying circumstance by clear and convincing evidence.[26] Well-settled is the rule that in criminal cases, self-defense shifts the burden of proof from the prosecution to the defense.[27]

For self-defense to prosper, petitioner must prove by clear and convincing evidence the following elements as provided under the first paragraph, Article 11 of the RPC: (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.[28]

Unlawful aggression

In self-defense, unlawful aggression is a primordial element.[29] There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who defended himself.[30] It 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 - at the time the defensive action was taken against the aggressor.[31]

The pertinent parts of the transcript of stenographic notes provide thus:

[Atty. Operiano:]

Q:

What exactly did you tell Felix Sumugat when you went near him while he was sawing the ipil-ipil tree?

A:

I told him. "Nong, please stop this first. We have to talk."

Q:

And what was the tone of your voice when you uttered those words?

A:

It was in a low voice because I still respect him being older than me, sir.

Q:

What did Felix Sumugat do, if any when you uttered those words?

A:

He stopped the engine of the chainsaw and then laid down on the ground and said, "What?"

Q:

What did Felix Sumugat say to you, if any?

A:

Felix Sumugat said, "So, what do you mean to say?" I told him, "Nong, just cut the branches and the main trunk will be placed in the bodega because my father-in-law and my brother-in-law will be arriving in March."

Q:

And what did Felix Sumugat say, if any?

A:

He said, "You have nothing to do with this. You are only an in-law. I will kill you."

Q:

When Felix Sumugat uttered those words, what was the tone of his voice?

A:

He was shouting, sir.

Q:

And after he said, "I will kill you," what happened, if any?

A:

He drew his revolver and aimed at me, sir.

xxxx

Q:

While Felix Sumugat was pointing that gun at you, what did you do, if you did anything?

A:

I raised both my hands, sir.

Q:

And when you raised both your hands, what did you say, if any?

A:

I said, "Nong, I will not fight you."

Q:

What did Felix Sumugat do, if any after you said you will not fight him, at the same time raising both your hands?

A:

He said, "I will kill you."

Q:

How many times did he say, "I will kill you"?

A:

Twice, sir.

xxxx

Q:

Now, after you were able to wrest the possession of that gun from Felix Sumugat, what did you intend to do with the same?

A:

I stepped a little backward but he was fast in picking up the chainsaw and then started its engine.

Q:

And what did Felix Sumugat do with the chainsaw after he picked it up and started the engine?

A:

He thrust the chainsaw towards me, sir.

Q:

And what did you do when Felix Sumugat made a forward thrust of that chainsaw directed to you?

A:

I stepped backward a little and with the use of that firearm which I wrested from him, I fired a shot to the ground, sir.

Q:

What was your intention in firing that gun on the ground?

A:

Just to warn him that he will not assault me, sir.

Q:

Now, after you fired that gun pointed on the ground, what did Felix Sumugat do, if any?

A:

He insisted in trying to reach me with the chainsaw but I leaned backward, sir.

Q:

Now, when you stepped backward and leaned backward to evade the blade of the chainsaw, what else happened, if any?

A:

When I leaned backward at the same time parrying the chainsaw, accidentally, I pressed the trigger of that gun, sir.[32]

xxxx

Witness Bermudez, who was 40 meters away and saw what transpired, corroborated petitioner's account[33] He remained steadfast and unwavering even on cross-examination. Moreover, petitioner's narration of the events is supported by the medico-legal report[34] stating that he indeed suffered wounds in his left hand.

Doubtless, the utterance of Sumugat to kill petitioner coupled by his act of aiming a gun at him, and his continued thrusting of the chainsaw that hit petitioner's palm constitute unlawful aggression.

Reasonable necessity of the means employed

In *People v. Catbagan*[35] the Court ruled that the means employed by the person invoking self-defense is reasonable if equivalent to the means of attack used by the original aggressor. Whether or not the means of self-defense is reasonable depends upon the nature or quality of the weapon; the physical condition, the character, the size and other circumstances of the aggressor; as well as those of the person who invokes self-defense, and also the place and the occasion of the assault.[36]

In ruling that the element of "reasonable necessity of the means employed" is absent, the appellate court opined that "[t]here could have been several ways for petitioner to repel the aggression without having to kill the victim, especially that the latter was already wounded on the foot and physically feebler than [petitioner]. More so, the victim only had a chainsaw, a crude weapon more difficult to handle x x x." [37]

The Court disagrees with the CA.

First, it must be noted that the gun which petitioner grabbed from the victim was the only weapon available to him and that the victim was continuing to thrust the chainsaw towards him. Indeed, a chainsaw is difficult to operate. It could be reasonably inferred, however, that it was not the victim's first time to operate a chainsaw considering that he was previously using the same to cut the uprooted tree without any person assisting him for that matter. Also, the chainsaw was switched on when the victim was thrusting it towards petitioner. Hence, the danger that petitioner would be cut into pieces by the chainsaw was very real. Perfect balance between the weapon used by the one defending himself and that of the aggressor is not required, because the person assaulted loses sufficient tranquility of mind to think, to calculate or to choose which weapon to use.[38] Certainly, it would have been different if the victim assaulted petitioner using a blunt object for in that case, the use of a gun to repel such attack would undoubtedly be unreasonable. The ruling of the Court in *Cano v. People*[39] thus applies in this case, viz:

x x x the reasonableness of the means employed to repel an actual and positive aggression should not be gauged by the standards that the mind of a judge, seated in a swivel chair in a comfortable office, free from care and unperturbed in his security, may coolly and dispassionately set down. The judge must place himself in the position of the object of the aggression or his defender and consider his feelings, his reactions to the events or circumstances. It is easy for one to state that the object of the aggression or his defender could have taken such action, adopted such remedy, or resorted to other means. But the defendant has no time for cool deliberation, no equanimity of mind to find the most reasonable action, remedy or means to. He must act from impulse, without time for deliberation. The reasonableness of the means employed must be gauged by the

defender's hopes and sincere beliefs, not by the judge's.[40]

Second, the fact that the victim was older than petitioner is not an accurate gauge to declare that the former was weaker than the latter. Youth is not tantamount to strength as advanced age does not connote frailty. In this case, the victim, despite being 62 years of age at the time of the incident, was certainly not feeble considering that he was able to operate the chainsaw to cut the uprooted tree. Further, even if the victim's left foot was wounded by the first shot fired, it is not entirely impossible that he continued to assault petitioner using the chainsaw. In the same way that petitioner was impelled by the instinct of self-preservation, the victim, too, could have been driven by fury and adrenaline in continuing to attack petitioner.

Third, the nature and number of wounds inflicted by the accused are constantly and unremittingly considered as important indicia.[41] It is worthy to note that petitioner did not immediately shoot the victim when he successfully took possession of the gun. He shot Sumugat only when the latter continued to attack him with the chainsaw. In addition, petitioner's first shot wounded the victim on the left foot. It was only when he was slashed by the chainsaw on his left hand that petitioner fired the fatal shot.

Finally, as stated in the case of *People v. Boholst-Caballero*:[42]

The law on self-defense embodied in any penal system in the civilized world finds justification in man's natural instinct to protect, repel and save his person or rights from impending danger or peril; it is based on that impulse of self-preservation born to man and part of his nature as a human being.[43]

It would be wrong to compel petitioner to discern the legally defensible response to the victim's attack when he himself was staring at the evil eye of danger.[44] Our laws on self-defense are supposed to approximate the natural human responses to danger, and not serve as our inconvenient rulebook based on which we should acclimatize our impulses in the face of peril.[45]

Lack of sufficient provocation

When the law speaks of provocation either as a mitigating circumstance or as an essential element of self-defense, it requires that the same be sufficient or proportionate to the act committed and that it be adequate to arouse one to its commission. It is not enough that the provocative act be unreasonable or annoying.[46] Petitioner's act of telling the victim not to cut the trunk of the uprooted tree could hardly be considered provocation.

Under the law, a person does not incur any criminal liability if the act committed is in defense of his person. Thus, all the elements of self-defense having been established in this case, petitioner is entitled to an acquittal.

WHEREFORE, the petition is GRANTED. The 16 September 2008 Decision and 6 April 2011 Resolution of the Court of Appeals in CA-G.R. CR No. 00312 are REVERSED and SET ASIDE. Petitioner Danilo Remegio is hereby ACQUITTED of homicide. The bail bond posted for his temporary liberty is hereby cancelled and ordered released to petitioner or his duly authorized representative.

SO ORDERED.

Velasco, Jr., (Chairperson), Bersamin, Leonen, and Gesmundo, JJ., concur.

October 19, 2017

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on September 27, 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 19, 2017 at 10:10 a.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[1] Rollo, pp. 23-42.

[2] Id. at 53-54.

[3] Records, Vol. II, pp. 597-613; penned by Judge Antonio B. Bantolo.

[4] Records, Vol. I, p. 60.

[5] Id. at 72-73.

[6] TSN, 5 October 2000, pp. 4-5.

[7] Id. at 7-8.

[8] Id. at 8-10.

[9] Id. at 10-12.

[10] TSN, 24 January 2005, p. 16.

[11] Id. at 18-19.

[12] Id. at 22-23.

[13] Id. at 25-26.

[14] Records, Vol. I, pp. 9-10.

[15] TSN, 12 April 2005, pp. 12-13.

[16] Id. at 17.

[17] Records, Vol. II, p. 388.

[18] TSN, 6 September 2004, pp. 7-12.

[19] Records, Vol. II, p. 613.

- [20] Id. at 622.
- [21] Rollo, pp. 40-41.
- [22] 19 Phil. 227, 232 (1911).
- [23] Rollo, pp. 9 and 17-18.
- [24] Id. at 62-69.
- [25] Id. at 73-76.
- [26] People v. Delos Santos, 739 Phil. 658, 666 (2014).
- [27] People v. Genosa, G.R. No. 464 Phil. 680, 714 (2004).
- [28] People v. Galvez, 424 Phil. 743, 751 (2002).
- [29] Cano v. People, G.R. No. 155258, October 7, 2003, 459 Phil. 416, 430 (2003).
- [30] People v. Samson, 768 Phil. 487, 496 (2015).
- [31] Cano v. People, supra note 29.
- [32] TSN, 5 October 2000, pp. 812.
- [33] TSN, 7 September 2000, p. 18.
- [34] Records, Vol. I, p. 180.
- [35] 467 Phil. 1044, 1074 (2004).
- [36] Luis B. Reyes, The Revised Penal Code, Book One, Seventeenth Edition (2008), p. 180.
- [37] Rollo, p. 37.
- [38] Luis B. Reyes, The Revised Penal Code, Book One, Seventeenth Edition (2008), p. 180.
- [39] Cano v. People, supra note 29.
- [40] Id. at 436.
- [41] Nacnac v. People, 685 Phil. 223, 234 (2012).
- [42] 158 Phil. 827 (1974).
- [43] Id. at 832.
- [44] Soplente v. People, 503 Phil. 241, 258 (2005).
- [45] Id.
- [46] Cano v. People, supra note 29 at 436-437.

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