

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SENDENCIO BALMACEDA ALIAS "SENDING"; AND
MARIANO SERRANO, ACCUSED-APPELLANT.**

G.R. No. 71638. February 27, 1987

Ponente: PARAS, J.

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PARAS, J.:

In an amended information filed with the Regional Trial Court Branch XVII, Tabaco, Albay, [*] Sendencio Balmaceda and Mariano Serrano were charged with the crime of "assault upon an agent of a person in authority with homicide with the use of illegally possessed firearm."

After trial, the court a quo rendered judgment dated June 29, 1985 finding the accused Sendencio Balmaceda guilty beyond reasonable doubt of the crime of homicide committed with the use of illegally possessed firearm, aggravated by assault upon an agent of a person in authority, while accused Mariano Serrano was acquitted for lack of evidence against him. The dispositive part of the decision reads:

"NOW THEREFORE, UPON ALL THE FOREGOING, the accused SENDENCIO BALMACEDA, alias SENDING, and whose real name is SENDENCIO BALMACEDA, a parolee of Sto. Domingo, Albay and residing at Tabaco, Albay, is hereby found GUILTY beyond reasonable doubt of the crime of HOMICIDE committed with the use of ILLEGALLY POSSESSED FIREARM, aggravated by ASSAULT UPON AN AGENT OF PERSON IN AUTHORITY, penalized under paragraph 2, Section 1 of Presidential Decree No. 1866 which took effect on June 29, 1983 and published on July 4, 1983, and for which reason said accused is hereby sentenced to suffer the supreme penalty of "DEATH".

Said accused, despite the aforesaid sentence, being civilly liable for the crime he has committed, is hereby ordered to pay unto the heirs of the late Pat. Vicente Brul, the following:

- (1) The sum of THIRTY THOUSAND (P30,000.00) PESOS for and as indemnity for causing the death of Pat. Vicente Brul;
- (2) The sum of ONE HUNDRED NINETY FIVE THOUSAND SIX HUNDRED SEVENTY TWO (P195,672.00) PESOS for and as loss of earnings, as the heirs of the late Pat. Brul were deprived of his earnings for the next thirty one (31) years, or until his retirement from the service at the age of sixty (60) years old; (sic)
- (3) The sum of TWENTY THOUSAND (P20,000.00) PESOS for and as moral damages;
- (4) The sum of TEN THOUSAND (P10,000.00) PESOS for and in reimbursement of the expenses incurred by the heirs of Pat. Vicente Brul, for funeral, burial, wake and other related expenses.

Accused MARIANO SERRANO is hereby ACQUITTED there being no evidence adduced that he has committed any crime at all.

Costs against accused SENDENCIO BALMACEDA.

SO ORDERED."

The death penalty having been imposed on accused Sendencio Balmaceda, this case comes to Us on automatic review.

The facts of the case, as stated in the decision of the trial court, are as follows:

"By the evidence adduced, the Court is convinced that on May 26, 1984 at about 11:30 in the evening, Pat. Vicente Brul is patrolling his beat at Divino Rostro, Tabaco, Albay, for it is within the vicinity of Patranco (now Philtranco Station), terminal at Tabaco, Albay. He is therefore in the actual performance of his duty, although he is not in uniform, as most of the policemen are now, due to the prevailing peace and order situation in the country.

While performing his duty as such, it is not clear why he went inside Hilda's Beerhouse, but he did, and while he was inside said establishment, he saw the group of Solomon Senson, a buy and sell man; Sendencio Balmaceda alias Sending but whose real name is Sendencio Balmaceda now one of the accused, Mariano Serrano, the other, accused, an employee of the Bureau of Land Transportation at Tabaco, Agency and one Leoncio Teaño. They were drinking beer in the place when Pat. Brul arrived. Upon entering the establishment mentioned, Solomon Belison, who appears to be spending for the group, invited Patrolman Vicente Brul to join them. Knowing the group, Pat. Brul consented, and Solomon Belison ordered a beer for him. It is not clear whether Pat. Brul acceded to the invitation or not, but the fact is his presence was resented by accused Sendencio Balmaceda because Pat. Brul stood there without the group's permission.

For one reason or another, and not so clear, Pat. Brul got hold of a peeling knife, (not a dagger as testified to by accused Sendencio Balmaceda) and told them that he will use it to peel something. As admitted by Solomon Belison, at the time, there was no appetizer on the table (pulutan). This knife was taken by accused Sendencio Balmaceda from Pat. Brul, deposited it in the counter, as it appears that accused Sendencio Balmaceda, who is a parolee, resents authorities, especially those connected with the military. Pat. Brul, not even getting angry, despite having been disarmed of his peeling knife, got the knife from the counter.

At this point, Pat. Vicente Brul went out, with his back turned and accused Sendencio Balmaceda following, and the latter snatched the service revolver of Pat. Vicente Brul from his waist, as the gun is tucked in the waist of Pat. Brul. After snatching it from Pat. Brul, Pat. Brul asked that the gun to be returned to him, but instead of doing so, accused Sendencio Balmaceda, fired the gun. It is not clear as to what direction did said accused fire it; but said accused claimed that it was on the ground. This shot was heard by Eliseo Barrameda, an owner of a store nearby, who went to the door of his store and tried to find out what is happening. It was at this point, that this witness, (Eliseo Barrameda) who appeared to the Court as an unbiased and truthful witness, saw what happened. From his account of the incident, it was clearly established that Pat. Vicente Brul was trying to get back his gun which was snatched away from his waist by the accused, Sendencio Balmaceda. Pat Brul pleaded, to no avail, and accused Balmaceda even taunted and insulted Pat. Brul by saying, "If this is your gun, why is it in my possession." This insult or taunt, did not even caused (sic) the victim to become violent, and instead pleaded for the return of the gun as he not only knew that he will have no face to report to his Station without a service firearm and which was taken away from his by a parolee. Pat. Brul, then did the only thing he knew; to go after the accused and try to get the gun, and so they grappled for its possession. At this point, it must be stated that the late Pat. Vicente Brul is well within his right to recover his property. It is also at this point that he sustained the contusions of his body which was of course logically inflicted by the accused Sendencio Balmaceda.

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Now, failing to get it (gun), and the accused Balmaceda who have been resenting the position or status of the victim as a member of the Police Force, or a man in uniform, fired at the late Pat. Vicente Brul, when they are a meter apart (resulting in the latter's death). Thus, the gun must have been half a meter or less away from the late Pat. Brul when the same exploded and while accused Sendencio Balmaceda was on the left side of the victim. This was clearly seen by witness Eliseo Barrameda. The bullet hit the left portion of the body of the late Pat. Brul, near or at the vicinity of the least lower rib, and the bullet did not go out, but it lodged itself in a bone.

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After shooting the late Pat. Brul, the accused Sendencio Balmaceda immediately left the premises taking him (sic) the gun and not even helping the victim, Pat. Vicente Brul.

Eliseo Barrameda further claimed that when he went to the aid of Pat. Brul, as no other person went to his aid, except him, he saw the peeling knife at the left palm of Pat. Brul, and he took it and gave it to the police." (pp. 30-36, Trial Court's Decision dated June 29, 1985)."

Appellant assigns the following errors allegedly committed by the trial court:

- The trial court erred in not finding that accused Balmaceda acted in self-defense.
- Assuming arguendo that defendant's culpability for the death of Pat. Vicente Brul has been established by proof beyond reasonable doubt and the justifying circumstance of self-defense cannot be considered in defendant's favor, nevertheless, the trial court erred in not appreciating the attendance of mitigating circumstances in defendant's favor such as incomplete self-defense and voluntary surrender.
- The trial court erred in holding that the firearm allegedly used in this was unlicensed.

Anent the first and second assignments of error:

The elements of self-defense are: (a) unlawful aggression; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself. (Art. 11 par. 1, Revised Penal Code).

According to accused - appellant, the foregoing three (3) elements are present —

(a) Unlawful aggression — in invoking self-defense appellant claims that Pat. Brul drew a knife and stabbed appellant. When appellant felt he was injured, he tried to get the gun from the waist of Pat. Brul. In their grappling for possession of the gun, it exploded and killed Pat. Brul.

(b) Reasonable necessity of the means employed — upon sustaining a stab wound in his abdomen accused contends that he cannot be tasked thereafter with coolly appraising what action to take next. Therefore, his act of firing at his assailant, whether intentionally or by accident can be justified by his instinct of self-preservation.

(c) Lack of sufficient provocation — that not one of accused' actions on the night of May 20, 1984 can be considered provocative.

According to the Solicitor General — there was no previous unlawful attack that placed appellant's life in danger. Prosecution witness Eliseo Barrameda testified that Pat Brul was not holding a knife at the time he was arguing with appellant for the latter to return the gun. He likewise testified that he never saw the victim even try to stab

appellant when they grappled for the possession of the gun. In fact, while Pat. Brul's hand was later found with a knife, there was no drop of blood thereon thus, negating appellant's claim that he was stabbed and wounded by Pat. Brul which allegedly forced him to shoot the victim. Moreover, the evidence shows that appellant was one (1) meter away when he shot the victim.

Neither was there lack of sufficient provocation on the part of appellant. On the contrary it was appellant who, without being insulted or attacked by Pat. Brul, wrested away from the latter a small peeling knife. Not contented with that, appellant snatched from behind the revolver of Pat. Brul when the latter was going out. Therefore, all the provocations came from appellant.

There being no unlawful aggression nor sufficient provocation from the victim, there is undoubtedly no reasonable necessity for appellant to shoot the victim.

Consider too appellant's failure to plead and/or invoke said defense before any of the apprehending and/or investigating officers. He should have come out and told the authorities that he killed the victim merely to defend himself. Instead appellant went into hiding. Flight is incompatible with innocence.

As to the third assignment of error:

Appellant claims that he cannot be convicted of homicide with the use of illegally possessed firearm on the ground that said firearm was licensed under the name of Pat. Brul.

This contention was extensively discussed in the decision of the trial court, as follows:

"And finally as to whether accused Sendencio Balmaceda used an unlicensed firearm in shooting Pat. Brul, the court is certain and has not entertained any doubt that he did. In the first place, the accused is admittedly a parolee; As such he cannot be granted any license to carry firearm, such less given a permit to carry it outside his residence. Second: The firearm used in the commission of the offense is the 38 caliber service revolver of the victim, so it cannot be licensed to the aforesaid accused. Third, the accused actuation after shooting Pat. Vicente Brul, in running away with the latter's service revolver, and up to now, the accused has not only failed to surrender it, but even disclaims having taken it, when it has been satisfactorily shown that he took it, is an evident showing of his interest not only to keep it for himself but also to appropriate it."

WHEREFORE, the decision of the trial court is hereby **AFFIRMED**, except that the penalty of death is hereby reduced to reclusion perpetua.

SO ORDERED.

Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Cruz, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

Teehankee, C.J., in the result.

Gutierrez, Jr., J., on leave.

Feliciano, J., no part.

[*] Penned by Judge Oscar Pimentel.

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