

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FLORENTINO EDUARTE @ TINONG, FREDESWINDO EDUARTE @
INDOY – ACQUITTED, AND JULIE EDUARTE, – AT
LARGE. FLORENTINO EDUARTE @ TINO...**

G.R. No. 72976. July 09, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

In this appeal from the decision of the Regional Trial Court of Abra, Branch II in Criminal Case No. 250 the accused-appellant prays for a judgment of acquittal in lieu of the verdict of conviction rendered by the trial court on October 31, 1985 with the following dispositive portion:

"IN VIEW OF THE FOREGOING, the Court finds and holds Florentino Eduarte guilty of the crime of Murder, qualified by treachery as charged in the information, and is hereby sentenced to suffer the penalty of reclusion perpetua, and to indemnify the heirs of the victim the sum of P30,000.00 and to pay the costs of the proceedings. Fredeswindo Eduarte is ACQUITTED, for lack of sufficient evidence." (Rollo, pp. 25--26)

In resolving the issue of whether or not the defense of relatives under Article II, subparagraph (2) of the Revised Penal Code can be invoked by the accused-appellant in his favor, we are confronted with two conflicting versions of the facts.

The evidence for the prosecution establishes the following facts:

"Florentino Eduarte, Fredeswindo Eduarte and Julie Eduarte are brothers and residents of Dolores, Abra. Fredeswindo Eduarte married the sister of Roberto Trinidad. On the night of December 4, 1984, Fredeswindo Eduarte, Roberto Trinidad and Sonny Testado were in the house of Roberto Trinidad at Dolores, Abra drinking liquor. Fredeswindo lost control of himself and suspecting that his wife had an illicit relation with another man, he quarrelled with his wife. He became violent and made loud outburst to the extent of getting a scissor inside the house. Seeing the intention of Fredeswindo Eduarte, Roberto Trinidad pacified him. Instead of being appeased, Fredeswindo Eduarte thrust (sic) the scissor he was holding to his brother-in-law Roberto Trinidad. Vicente Trinidad and his brothers went to the rescue of their brother Roberto Trinidad and wrestled the scissor from Fredeswindo Eduarte. Thereafter, Roberto Trinidad drove his jeep and together with Sonny Testado, went to the Municipal Building of Dolores, Abra to seek the help of policemen. On their way back and while approaching their house, Roberto Trinidad and Sonny Testado saw Fredeswindo Eduarte lying flat on the road through the head lights of the jeep. Roberto Trinidad stopped his jeep. Without putting off the light of the jeep, he alighted to help Fredeswindo Eduarte. When Roberto Trinidad was in the act of extending assistance and asking what happened to Fredeswindo Eduarte, Florentino Eduarte, who was beside the road, shot him, which caused his death. Not long after, police authorities arrived at the place and looked for Florentino Eduarte but failed to locate him." (Brief for the Plaintiff-Appellee, pp. 4-5)

On the other hand, the defense, in its counter--statement of facts, relates as follows:

"On the early night of December 4, 1984, accused-appellant Florentino Eduarte, together with Larry Bañaga and Belleng Alfaro, were working in the house of his uncle Maximino Bañaga (T.S.N. p. 3 Oct., 1985). Just about that time, his brother Julie Eduarte arrived and informed him that they are killing his older brother (Fredeswindo Eduarte) (T.S.N. p.4, Oct. 1, 1985; T.S. N. p. 51, Sept. 2, 1985). Surprised upon hearing the news (T.S.N. p. 8, Oct. 1, 1985), Florentino Eduarte rushed from his place of work, proceeded to their house, got a gun from the trunk owned by his late father and went directly to the scene unmindful whether the gun was loaded or not (T.S.N. p. 7, Oct. 1, 1985). When he arrived at the place of incident, he saw Roberto Trinidad (victim) clubbing his brother who was lying, face downward and his shirt soaked with blood (T.S.N. p. 5, Oct. 1, 1985).

Earlier that day at about 4:30 p.m. Fredeswindo Eduarte who is living with his in--laws, had a drinking spree in his in-law's house with the brother of his wife Rita namely Roberto Trinidad (the victim), a cousin Jimmy Trinidad, and an uncle of the deceased, Sonny Testado (T.S.N. p. 17, August 20, 1986).

While they were drinking, Fredeswindo Eduarte confronted his wife about her illicit relationship with another man and irked by the accusation, his brother-in-law, Roberto Trinidad (victim), butted in and berated him as merely affiliated with the deceased family (T.S.N. p. 17, Aug. 20, 1986). An exchange of words ensued leading to an altercation involving Roberto and his brother Vicente Trinidad. Fredeswindo Eduarte defended himself by grasping a scissor from his back and thrusting it against his assailant. This incident was witnessed by the victim's wife, Delia F. Trinidad, who sought the help of the other brothers of the deceased (T.S.N. p. 25, July 25, 1985) namely Roque and Bienvenido Trinidad.

At this juncture, Julie Eduarte, a brother of Fredeswindo Eduarte saw the four Trinidad brothers namely, Roberto (victim), Vicente, Bienvenido & Roque, ganging up on his brother. He approached and stoned the house as a consequence of which he was chased by the two Trinidad Brothers. (T.S.N. pp. 41--42, Aug. 19, 1985).

Julie Eduarte immediately proceeded to the house of his uncle Maximino Bañaga where his brother Accused-Appellant Florentino Eduarte is (sic) working to secure assistance." (Rollo, pp. 118-120)

At the arraignment, the accused-appellant and Fredeswindo Eduarte whose name has been repeatedly misspelled in the records pleaded not guilty to the crime of murder as charged in the information which reads:

"That on or about December 4, 1984, at about 8:00 o'clock at night, at Curapo, in the municipality of Dolores, Province of Abra, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, confederating and mutually helping one another, with intent to kill, with treachery and evident premeditation, and while armed with a long firearm and a bolo (unrecovered), did then and there wilfully, unlawfully and feloniously assault, attack and shoot one Roberto Trinidad, hitting him on the left chest and on other parts of his body, which multiple gunshot wounds caused his death shortly thereafter." (Rollo, p. 21)

Co-accused Julie Eduarte has remained at large up to the present.

After trial, the lower court adjudged the accused-appellant guilty beyond reasonable doubt of the crime of murder while his brother Fredeswindo was acquitted for lack of sufficient evidence.

The accused-appellant maintains that he is innocent of the crime as charged invoking the justifying circumstance of defense of relatives. Instead of making an assignment of errors, the accused-appellant states that the trial court was confronted with two conflicting versions, one asserting that Roberto Trinidad was shot while assisting Fredeswindo Eduarte and the other stating that Roberto was shot while clubbing Fredeswindo. In both cases, the appellant states that defense of relative should be appreciated.

Article II, subparagraph 2 of the Revised Penal Code provides that:

"2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or of his relatives by affinity in the same degrees and those by consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstances are present, and the further requisite, in case the provocation was given by the person attacked, that the one making defense had no part therein. (Underlining supplied)

The first and second requisites are unlawful aggression and reasonable necessity of the means employed to prevent or repel the unlawful aggression. Hence, it was incumbent upon the accused-appellant to prove the existence of the three essential requisites of the justifying circumstance of defense of relatives namely: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) in case the provocation was given by the person attacked, that the one making the defense had no part therein.

The accused-appellant claims that there was unlawful aggression on the part of Roberto Trinidad considering that the scenario he saw after he was summoned from his place of work by his other brother Julie was that of his allegedly assaulted brother Fredeswindo sprawled on the ground and bathed in his own blood with Roberto Trinidad clubbing Fredeswindo. It was when Roberto was about to deliver the final blow to Fredeswindo that the accused-appellant claimed he shot Roberto in defense of his brother. Thus, according to the accused-appellant, the second requisite is also present considering that the use of a gun at that pressing moment was reasonable and necessary to prevent or repel the aforesated unlawful aggression. As regards the third requisite, the accused-appellant contends that there is no debate as to its presence since the accused-appellant was clearly not a part of the melee in question.

We find no merit in the claim that the shooting of Roberto was done in defense of a relative. For this justifying circumstance to prosper, the evidence adduced must be persuasive. Although it is true that the accused-appellant took no part in the provocation that led to the killing incident, his testimony that there was unlawful aggression on the part of Roberto was self-serving and uncorroborated. The trial court discredited the accused-appellant's version and made the following observations:

"The following circumstances render the pretension or claim of Florentino Eduarte unreliable and unworthy of belief:

First, the position of the jeep in relation to Fredeswindo Eduarte. It is un rebutted that the jeep was driven by Roberto Trinidad and stopped near Fredeswindo Eduarte who was lying on the road. If Roberto Trinidad had any ill feelings towards his brother-in-law, Fredeswindo Eduarte, he would not have stopped his jeep and alighted. It was not so hard for him to accelerate the speed of his jeep, and run over the body of Fredeswindo Eduarte who was lying flat on the road, rather than alighting (sic) from his jeep and club him.

Second, the headlights of the jeep remained lighted. If Roberto Trinidad had an intention to club or to harm his inebriated and helpless brother-in-law lying on the road, he should have put off the light of his jeep before alighting. His having alighted from his jeep without putting off the light shows his intention of extending assistance to his brother-in-law Fredeswindo Eduarte.

Third, failure of Florentino Eduarte to present himself to the authorities. It is clear that immediately after having shot Roberto Trinidad, Florentino Eduarte ran away and never presented himself to the authorities. If true that he shot Roberto Trinidad while in the act of clubbing his brother Fredeswindo Eduarte, why did he not present himself to the authorities and relate what happened? The natural instinct of any person who killed someone in defense of his person or relative is to present himself to the authorities and relate what happened to him and what he did.

Fourth, the immediate flee (sic) of Florentino Eduarte and Larry Bañaga without verifying the actual physical condition of Fredeswindo Eduarte. Larry Bañaga and Florentino Eduarte testified that they proceeded to the

place of the incident to see Fredeswindo Eduarte, that when they arrived, they saw Fredeswindo Eduarte lying on the road. If it were true that they saw Roberto Trinidad club Fredeswindo Eduarte and was in the act of clubbing when Florentino Eduarte shot him, why did they immediately run away without extending any assistance to Fredeswindo Eduarte, or verifying his actual condition? This action of Florentino Eduarte and Larry Bañaga is strange and demerits human experience. It is indicative of a guilty conscience." (At pp. 24-25, Rollo)

In the absence of any grave abuse of discretion on the part of the trial judge who had the privilege of examining the demeanor of the witnesses and who thus, ably ascertained the credibility of said witnesses during the trial proceedings, we find no cogent reason to depart from the well-entrenched principle that findings of fact of the trial court as to the credibility of witnesses are entitled to our highest respect. (People v. Norberto Clores y Coral, G.R. No. 82362, April 26, 1990; People v. Rolando Caldito, et al., G.R. Nos. 78432-33, February 9, 1990; People v. Pedrosa, 169 SCRA 545 [1989]; People v. Ramos, 167 SCRA 476 [1988]. Hence, for lack of a clear unlawful aggression on the part of the victim Roberto and of the reasonable necessity of the means employed by the accused-appellant, the justifying circumstance of defense of relative cannot be availed of. (See People v. Sagre, 89 SCRA 570 [1979]; People v. Reynaldo Lingatong, G.R. No. 34019, January 29, 1990)

The accused-appellant himself categorically stated in open court that when he saw his brother Fredeswindo soaked with blood, he thought that his brother was already dead at the time (TSN, October 1, 1985, p. 5) Moreover, defense witness Larry Bañaga testified that he was with the accused-appellant when the latter was summoned by his other brother Julie who informed the accused-appellant that their brother Fredeswindo had been killed. (TSN, September 2, 1985, p. 50). In the light of these declarations, the flight of the accused-appellant after shooting Roberto without even bothering to examine the actual state of his sprawled brother Fredeswindo all the more discredits the allegation that the killing was done by the accused-appellant in defense of a relative. No better test has yet been found to measure the value of a witness' testimony than its conformity to the knowledge and common experience of mankind. (See People v. Maribung, 149 SCRA 292 [1987]) Suffice it to state that under the facts of this case flight is indicative of guilt as we have held time and again. (People v. Wilfredo Malinao alias "Welly", et al., G.R. No. 63735, April 5, 1990; People v. Cesario Degamo, et al., G.R. No. 60945, March 6, 1990; People v. Aurelio Espinosa alias "Rolly", et al., G.R. No. 72883, December 20, 1989; People v. Noelito Manzanares, G.R. No. 82696, September 8, 1989.)

As regards the presence of treachery qualifying the act of killing to murder, we find the records bereft of any proof that the mode of attack was consciously adopted by the accused-appellant to insure that the killing will be nicely executed without any risk to himself. The act of the accused-appellant in taking a gun with him on his way to the scene of the reported killing coupled with the attendant circumstances that he was working at the time when one of his brothers related the slaying of their brother and that he knew nothing about the earlier brawl in his brother-in-law's place shows that it was more the product of an impulse rather than a conscious and a discerning mind. For treachery to exist, there must be evidence showing that the mode of attack was consciously adopted by the appellant to make it impossible or difficult for the person attacked to defend himself or retaliate. (Art. 14, subpar. 16, Revised Penal Code; People v. Virgilio Uribe, G.R. No. 76493-94, Feb. 26, 1990 citing People v. Crisostomo, 160 SCRA 47 [1988]).

WHEREFORE, the judgment appealed from is hereby MODIFIED. Accused-appellant Florentino Eduarte is found guilty beyond reasonable doubt of the crime of HOMICIDE without any aggravating or mitigating circumstance. The prescribed penalty is reclusion temporal in its medium period but applying the Indeterminate Sentence Law, the accused-appellant is hereby SENTENCED TO EIGHT (8) YEARS and ONE (1) DAY of prision mayor as MINIMUM and SEVENTEEN (17) YEARS and FOUR (4) MONTHS of reclusion temporal as MAXIMUM. The indemnity imposed by the trial court in the amount of P30,000.00 is AFFIRMED.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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