

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EX-CPL. VICTORIO PLETADO, ACCUSED-APPELLANT.

G.R. No. 98432. July 01, 1992

Ponente: GUTIERREZ, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-98432/>

GUTIERREZ, JR., J.:

In an information filed by the Provincial Prosecutor of Davao, accused-appellant Victorio Pletado, a former soldier with the rank of corporal was charged in the Regional Trial Court of Davao with the crime of double murder under Article No. 248 of the Revised Penal Code. The crime was allegedly committed as follows:

"That on or about January 16, 1990, in the Municipality of Tagum, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation, with intent to kill, armed with M-16 Armalite, did then and there wilfully, unlawfully and feloniously attack, assault and shoot Sgt. Venancio Agipo, PA and Evelyn Delima, thereby inflicting upon them wounds which caused their deaths, and further causing (sic) actual, moral and compensatory damages to the heirs of the victims.

Contrary to law." (Rollo, p. 6)

When arraigned, the accused-appellant pleaded not guilty.

The People's version of the incident which resulted in the deaths of Venancio Agipo and Evelyn Delima is summarized by the Solicitor General, as follows:

"At about past midnight of January 16, 1990, appellant, together with other Philippine Army soldiers of the 40th Infantry Battalion stationed at Magum, Tagum, Davao, namely: Cpl. Ireneo Francisco, Sgt. Agipo (one of the victims), and Pfc. Quioyo, left their barracks and proceeded to the Poblacion of Tagum to fetch Cpl. Danilo Benedicto whom they wanted to invite for a drink. (pp. 8, 67, TSN, March 14, 1990).

At first, Cpl. Benedicto refused as he felt tired, but upon proddings from his fellow soldiers, he went along with them (p. 9, *ibid*).

The group proceeded to the Poblacion of Tagum and went to Neneng's Store located at the Peneyras Bus Terminal. Sgt. Agipo and Cpl. Francisco then ordered beer for the group which was then occupying a table. Cpl. Benedicto and a companion were seated on one side and fronting them on the opposite side of the table, likewise seated, were Sgt. Agipo, Cpl. Francisco and appellant (pp. 9, 10, *ibid*).

Not long thereafter, appellant and Pfc. Quioyo had a discussion regarding a past incident which happened at the Bangoy Airport, when appellant fell off from a service jeep then driven by Pfc. Quioyo (p. 69, *ibid*).

The discussion between the two turned into a heated argument. Cpl. Benedicto advised appellant to calm down who was then banging his hands on the table. Appellant did not heed Cpl. Benedicto's advice (p. 10, *ibid*). Cpl. Francisco, observing that trouble was then brewing, tried to pacify appellant. He (Cpl. Francisco) tried to touch appellant's face and advised the latter, 'Pare, this is only between us, do not destroy our camaraderie within the unit.' Appellant did not calm down and even got infuriated and parried the hand of Cpl. Francisco. The latter

then told appellant, 'Do not do that as it might destroy our unit.' Then and there appellant drew a fan knife and attempted to stab Cpl. Francisco. The latter fired a warning shot. Cpl. Benedicto still tried to pacify appellant, but the latter left the group which remained at Neneng's Store and continued drinking beer. (pp. 70-71, *ibid*).

About 30 minutes thereafter, appellant returned on board a passenger jeep, in uniform and armed with an M-16 Armalite rifle. Without hesitation and any warning, appellant fired his rifle towards the direction where the group of Cpl. Benedicto, Cpl. Francisco, Pfc. Quioyo, and Sgt. Agipo were then seated inside the Neneng's Store (pp. 14, 72-73, *ibid*).

At the first volley of gunfire, Cpl. Benedicto was hit on the upper portion of his left hand just above the elbow (p. 14, *ibid*). He jumped and sought cover behind the service jeep they earlier used just parked near them (p. 15, *ibid*).

Cpl. Francisco jumped behind the cooler inside the store and there sought cover from appellant's gunfire (p. 72, *ibid*). Cpl. Benedicto, although already hit, fired back using his .45 caliber service pistol (p. 15, *ibid*).

The firing stopped. Cpl. Francisco and Cpl. Benedicto emerged from where they sought cover. Cpl. Francisco was likewise hit on the right arm just below the shoulder (p. 73, *ibid*).

Likewise hit by reason of the 'strafing incident' were Sgt. Agipo and Evelyn Delima, a waitress. Sgt. Agipo was found slumped in a chair, his head bowed and resting on top of the table. Sgt. Agipo sustained gunshot injury on his stomach area, with entry wound on his right side and exit wound on the left portion of the stomach. (pp. 74-75; 16-17, *ibid*).

Evelyn Delima, who was a waitress at the adjacent store was hit on her head near the lower portion of the right ear without any exit wound on the lower portion of the left ear (pp. 17; 74-75, *ibid*).

Sgt. Agipo and Evelyn Delima died on the spot." (Appellee's Brief, pp. 4-7)

On the other hand, the appellant presented another version of the incident, to wit:

"On the early hours of January 16, 1990 accused Ex-Cpl. Victorio Pletado accompanied with (sic) Sgt. Aguipo (should be Agipo), Cpl. Benedicto, Cpl. Francisco and Pfc. Quioyo who went to Pereyras Terminal for a drinking spree. Accused Pletado did not join his companions to serve as a look out since his companions have been continuously drinking. (t.s.n., Session January 24, 1991, p. 13).

Later, accused Pletado approached Pfc. Quioyo to request him to stop drinking because of their assignment to proceed to Davao City early that same morning to fetch their battalion commander. Their companion, Cpl. Francisco, got mad with the instruction accused Pletado gave Pfc. Quioyo, thereby tried to tap accused Pletado's ear at the same time drawing his .38 caliber. Cpl. Francisco pointed his gun at accused making accused run towards the mini-cruiser while warning shots were fired at him by his companions. Sgt. Agipo had with him caliber .38; Benedicto caliber .38; Quioyo caliber .38; and Francisco caliber .40. t.s.n., Session January 24, 1991, pp. 14-16).

At this juncture, accused-Pletado went back to his barracks at NIA Magum, Tagum, Davao and reported immediately to Lt. Bendenillo the incident that happened in Poblacion, Tagum. Lt. Bendenillo instructed the accused to go back to where his companions were to tell them to stop drinking because on that morning, the mini-cruiser service jeep will be used to fetch the battalion commander. Lt. Bendenillo further instructed accused Pletado to be in uniform and at least go back with Pfc. Quioyo, who was the assigned driver of the service jeep. (t.s.n., Session January 24, 1991, pp. 17-18).

After changing to his uniform, accused went back to Pereyras terminal aboard a passenger jeep and alighted in front of DJ Cinema. While approaching his companions, he was immediately fired at. Accused was immediately hit on his right leg by Benedicto, resulting in a big scar, half inch in circumference and another

scar, a smaller than the entry, reflecting the wound's exit. (t.s.n., Session January 24, 1991, pp. 18-19). Accused Pletado tried to run because of the successive firing of the guns, but was again hit, this time by Francisco on the right side of his left leg, just 2 inches above his left knee and which exited on the left side of the left leg. (t.s.n., Session January 24, 1991, p. 21).

Accused-appellant almost collapsed but managed to run for a distance of four (4) meters, after which he fired back towards them. Upon the arrival of the military police team, accused voluntarily surrendered after which he was immediately brought to the Davao Regional Hospital for treatment. (t.s.n., Session January 24, 1991, p. 23). He had a 70/0 pressure upon arrival at said Hospital. (t.s.n., Session October 24, 1990, p. 9)." (Appellant's Brief, pp. 205)

As between these two (2) conflicting versions, the trial court gave credence to the prosecution. Accordingly, Pletado was found guilty of the crimes charged. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, the evidence of guilt having been proven beyond reasonable doubt, pursuant to Article 248 of the Revised Penal Code, Ex-Corporal VICTORIO PLETADO is hereby found guilty of Double Murder against Sgt. Venancio Agipo and Evelyn Delima, and he is hereby sentenced to serve two RECLUSION PERPETUA to be served at the National Penitentiary, Muntinlupa, and to indemnify at P30,000.00 each to the heirs of the deceased." (Rollo, p. 21)

The appellant now assigns the following errors:

FIRST ERROR: THE TRIAL COURT ERRED FOR NOT ACQUITTING THE ACCUSED-APPELLANT FOR HAVING ACTED IN COMPLETE SELF-DEFENSE.

SECOND ERROR: THE HONORABLE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED ON THE BASIS OF SPECULATIONS, SURMISES AND CONJECTURES.

THIRD ERROR: THE HONORABLE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED ON THE BASIS OF THE INCREDIBLE, IMPROBABLE, AND CONTRADICTORY TESTIMONIES OF THE WITNESSES FOR THE PROSECUTION.

FOURTH ERROR: THE HONORABLE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT. (Rollo, p. 74)

It is to be noted that under the first assigned error, the appellant completely changed his line of defense. Hence, while in the trial court the appellant denied killing Agipo and Delima, he now admits killing them, but he interposes "complete self-defense."

In view of this admission, we limit our review of the decision to whether or not the appellant had presented strong, clear and convincing evidence to prove the justifying circumstance of self-defense to be relieved of any criminal liability. (People v. Nabayra, G. R. Nos. 96368-69, October 17, 1991; People v. Bausing, 199 SCRA 355 [1991]; See also People v. Bayocot, 174 SCRA 285 [1989]; People v. Masangkay, 157 SCRA 320 [1988]; People v. Abagon, 161 SCRA 255 [1988]; People v. Tesorero, 71 SCRA 579 [1976]; People v. Llamera, 51 SCRA 48 [1973]; People v. Bauden, 77 Phil. 105 [1946]; and People v. Ansoyon, 75 Phil. 772 [1942]).

Legitimate self-defense is present when the following requisites concur: (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. (par. 1, Article 11, Revised Penal Code).

Unlawful aggression on the part of the victim is an indispensable requisite in self-defense. If there is no unlawful aggression, there is nothing to prevent or repel. (People v. Malazzab, 160 SCRA 123 [1988] cited in People v.

Bausing, supra) The test as to whether unlawful aggression is present under given circumstances is stated in the case of *People v. Bausing*, supra, to wit:

x x x x x x x x

"x x x [F]or aggression to be appreciated, there must be an actual, sudden, unexpected attack or imminent danger thereof, and not merely a threatening or intimidating attitude (*People v. Pasco, Jr.*, supra; *People v. Rey*, 172 SCRA 149 [1989] and the accused must present proof of positively strong act of real aggression (*Pacificar v. Court of Appeals*, 125 SCRA 716 [1983]; *People v. Aquitan*, 123 SCRA 501 [1983]; *People v. Aquino*, 124 SCRA 835 [1983]). Unlawful aggression must be such as to put in real peril the life or personal safety of the person defending himself or of a relative sought to be defended and not an imagined threat." (at pp. 361-362)

In the present case, the appellant insists on his version of the incident as opposed to the version of the prosecution to substantiate his stance that the "supposed offended parties" were guilty of unlawful aggression against his person. The ultimate issue, therefore, hinges on the credibility of witnesses.

The well-entrenched principle is that factual findings of the trial courts are accorded great weight and the highest degree of respect by the appellate courts in the absence of any showing that the trial court has overlooked some substantial material facts. (*People v. Aguiluz*, G. R. No. 91662, March 11, 1992; *People v. Caraig*, G. R. No. 91162, October 3, 1991; *People v. Payumo*, 187 SCRA 64 [1990]; *People v. Realon, et al.* 79 SCRA 422 [1980]; *People v. Espejo, et al.* 36 SCRA 400 [1970]). In this regard, we have consistently ruled that credibility is a matter that peculiarly falls within the province of the trial judge who had first hand opportunity to watch and observe the demeanor and behavior of witnesses, both for the prosecution and the defense, at the time of their testimony." (*People v. Hatague, et al.* G. R. No. 97308, April 7, 1992, citing *People v. De Jesus*, G. R. No. 93852, January 24, 1992; *People v. Turla*, 167 SCRA 278 [1988]; *People v. Escabarte*, 158 SCRA 602 [1988]).

After a second scrutiny of the records, we find no substantial reasons to deviate from the findings of the trial court.

The appellant capitalizes on the prosecution's evidence that - 1) When the appellant fled from Neneng's Store after the first incident involving their group, Cpl. Danilo Benedicto warned the others that the appellant "x x x might go to the barracks and come back with an arm (should be firearm)." (t.s.n., March 14, 1990, p. 12); and 2) the group composed of Cpl. Benedicto, Cpl. Francisco, Pfc. Quioyo and Sgt. Agipo saw the appellant return thirty (30) minutes after he left Neneng's store when he alighted from a Lawin jeep arrived; (t.s.n., March 14, 1990, p. 14) to convince us that the appellant was the victim of unlawful aggression. Thus, the appellant claims that given these facts, it is unimaginable how a group of enlisted men, except in the act of suicide, would rather risk exposing themselves to gunfire by waiting for the first burst of fire and be hit before seeking cover and firing back when they had the opportunity to do otherwise. The appellant opines that "It is more in accordance with one's automatic instinct for self-preservation, these supposed victims who were likewise armed, should fire at accused immediately after sighting him." (Appellant's Brief, pp. 8-9)

We find these conclusions not supported by the evidence on record.

Although Cpl. Benedicto warned the group that the appellant "might go back to the barracks and come back with an arm" the others were not perturbed by the warning. Cpl. Benedicto testified:

"Q Now, after Cpl. Pletado left, how about the four of you, where were you?

A We went back to the table and remained ourselves seated.

Q Now, what did you say?

A I advised Sgt. Agipo we would rather go home because Cpl. Pletado might go to the barracks and come back with an arm.

x x x x x x x x

ASST. PROSECUTOR:

Q What did your companion answer?

A Sgt. Agipo refused and answered, 'Why should we be afraid'.

Q What else did he say, if any?

A He answered further, 'It is good if we are handsome. It is better to die because nobody loves.'" (t.s.n., March 14, 1990, pp. 11-13)

The evidence on record conclusively shows that just after the appellant alighted from the Lawin jeep, he started firing his M16 rifle, first directing it at the parked service jeep, and thereafter, towards the group and "strafing" them.

Cpl. Benedicto testified as follows:

Q After a few minutes, after about 30 minutes, what happened?

A A Lawin jeep arrived.

Q Who was on board that Lawin jeep?

A Cpl. Pletado arrived with the Lawin and he wore his upper uniform.

Q Then, what did he do?

A He indiscriminately fired his gun towards us.

ASST PROSECUTOR:

May we request the word 'strafing' be used, Your Honor.

COURT:

Place that he was strafing us.

ASST. PROSECUTOR:

Q What did he use?

A He used M16 rifle.

Q What did you do when the accused was strafing your group?

A I was hit at my left upper hand.

Q Do you have evidence of your wound?

A Yes, I have.

(Witness showing a scar at the upper portion of his elbow with length of 1 and 1/2 inches and with a diameter of 2 inches of the wound.)

Q When you were hit, what did you do?

A I jumped beside the jeep which was parked near us.

Q How about Cpl. Francisco?

A Cpl. Francisco was able to jump behind Sgt. Agipo. But at the same time, Pletado was still firing his gun getting nearer us.

Q Now, while you were, you said you were hiding?

A Yes. I was hiding behind the tire of the jeep.

Q What did you do?

A Because he was still continuing firing his gun and getting nearer us, I tried to draw my 45 pistol. And when I peeped below the jeep, I tried to hit his foot.

Q Was he hit?

A I was not so sure. But he was still trying to attack towards the jeep. And because I already observed I was in danger, I tried to move back and hit him and that was the time I withdrew.

Q Was he hit?

A I was not so sure whether I hit him, but at least, the firing was able to stop." (t.s.n., March 14, 1990, pp. 13-16)

Cpl. Jesus Francisco corroborated the testimony of Cpl. Benedicto. He Added that after the appellant "jumped off the jeep" he started strafing at them and that the first strafing was directed towards the service jeep. He, too, was a victim of the "strafing." He was hit on his right arm. At the trial, he showed a scar just below his right shoulder, with more or less three (3) inches length and a width of one (1) inch. (t.s.n. March 14, 1990, p. 73) He was hit while hiding behind the cooler. (t.s.n., April 2, 1990, p. 29)

The version of the prosecution was bolstered by the testimony of Lani Briones, a salesgirl of Neneng's store. At the time of the incident, Briones was seventeen (17) years old and a first year high school student. She worked at the store from ten o'clock in the evening until seven o'clock the following day. On January 16, 1990, at about 2:00 o'clock in the morning, Briones was at the Neneng's Store serving the group of Cpl. Francisco, Sgt. Benedicto, Sgt. Venancio Agipo, Pfc. Quioyo and the appellant.

Briones testified that while she was outside the store, at about 2:00 o'clock in the morning, she saw the appellant return and "without any word, he fired a shot but, the first was directed to the ground." (t.s.n., April 2, 1990, p. 41) Immediately thereafter, the appellant "made a strafing in the store." (t.s.n., April 2, 1990, p. 41) She was about five meters away from where the appellant was located. She pointed at the appellant as the one who shot Cpl. Benedicto, Cpl. Francisco, Sgt. Agipo and Evelyn Delima.

The appellant, however, questions the credibility of Briones. The appellant argues that "x x x her claim that she did not even hide nor duck during the sudden attack even if she was supposedly nearest to the accused, and in fact saw and remembered everything that transpired is simply incredible." (Appellant's Brief, p. 13)

We are not persuaded.

There is no standard form of behavior when one is confronted with a shocking incident. (People v. Amoncio, 122 SCRA 686 [1983]; People v. Radomes, 141 SCRA 548 [1986]; People v. Catubig, G. R. No. 89732, January 31, 1992). In the present case, Briones satisfactorily explained her "unusual " behavior during the entire incident, to wit:

Q Now, while he was strafing the store how far were you from Pletado?

A About five (5) meters away.

Q Did you seek cover also?

A At first, I just watched.

Q Then, later on?

A Because at first, I never thought that that will happen, then, after the first shot, I moved backward and kept on watching." (t.s.n., April 2, 1990, p. 41)

xxx xxx xxx

PROECUTOR AVENTURADO:

Q You said in the cross examination that Cpl. Benedicto shot Pletado. Now, when did Cpl. Benedicto shot (sic) Pletado?

A When Pletado kept on strafing.

Q Now, you also said that you were looking at Pletado and the four other army men when Pletado was strafing at them, you mean to say you did not seek cover?

ATTY. GONZAGA:

Already answered that she was there standing akimbo.

PROSECUTOR AVENTURADO:

There was no such answer she was standing akimbo.

COURT:

Witness may answer.

WITNESS:

A No, I slowly moved backwards while watching them.

PROSECUTOR AVENTURADO:

Q Up to what point were you moving backward?

A When I was slowly moving backward I reached up to the gasoline station because it is just near." (t.s.n., April 3, 1990, pp. 37-38)

Briones is a disinterested witness. The defense has not shown any motive sufficient to impel her to perjure herself. There was no reason for Briones to incriminate the appellant except to tell the truth as she had witnessed the incident. (People v. Ballinas, G. R. No. 93300, October 4, 1991; People v. Catubig, supra).

The prosecution witnesses were spontaneous and straightforward in their testimony. They were subjected to rigid and prolonged cross-examinations and they never faltered. True, there were discrepancies as regards their respective positions before the incident. Such minor inconsistencies, however, do not affect their credibility. What matters is the fact that the accounts of the prosecution witnesses are replete with the same details and circumstances which show that the appellant, in a strafing manner, shot Sgt. Venancio Agipo and Evelyn Delima resulting in their instantaneous deaths.

Treachery qualified the crime into murder. There is treachery when the offender commits any of the crimes against a person employing means, methods or forms in the execution, without risk to himself arising from the defense which the offended party might make. (Section 16, Article 14, Revised Penal Code; *People v. Sabellano*, 198 SCRA 196 [1991]; *People v. Tinampay*, Gr. R. No. 80658-60, March 23, 1992; *People v. dela Cruz*, G. R. No. 68319, March 31, 1992). The appellant herein, immediately after alighting from a jeep, suddenly fired his M16 rifle, first at a parked service jeep and then at the victims, strafing them. Although, Cpl. Benedicto, Cpl. Francisco and Sgt. Agipo were armed, the attack on them was so sudden, they were practically defenseless. Their immediate response was to scamper away to look for a hiding place. It was only when Cpl. Benedicto was safe behind the parked service jeep that he was able to shoot back at the appellant hitting him twice on his legs.

However, we disagree with the trial court that evident premeditation attended the commission of the crime. Evident premeditation is appreciated only when the following elements are present: 1) the time when the offender determined to commit the crime; 2) an act manifestly indicating that he has clung to his determination; 3) sufficient lapse of time between determination and execution to allow himself to reflect upon the consequences of his act. (*People v. Quintos*, 186 SCRA 14 [1990]; *People v. Talla*, 181 SCRA 133 [1990]; *People v. Nabayra*, supra). These circumstances were not clearly established by the prosecution's evidence. The fact that after an altercation involving the appellant and the group of Sgt. Agipo, the former left and then returned after thirty (30) minutes and attacked the latter does not prove beyond doubt that he committed the crimes with evident premeditation.

The crime of murder is punished by reclusion temporal maximum to death. (Article 248, Revised Penal Code) Since there are no mitigating or aggravating circumstances present, the medium penalty which is reclusion perpetua was correctly imposed by the trial court. (See *People v. Munoz*, 170 SCRA 170 (1989); *People v. dela Cruz*, supra) However, the civil indemnity for each of the two crimes must be increased to P50,000.00 in conformity with recent jurisprudence. (*People v. Sison*, 189 SCRA 643 [1990]; *People v. Sazon*, 189 SCRA 700 [1990]; *People v. Narit*, 197 SCRA 334 [1991]; *People v. Tiozon*, 198 SCRA 368 [1991]; and *People v. dela Cruz*, et al. supra).

WHEREFORE, subject to the above modification, the judgment appealed from is AFFIRMED.

SO ORDERED.

Feliciano, Bidin, Davide, Jr., and Romero, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.