

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANGELITO LUALHATI Y DOMINGUEZ, ACCUSED-APPELLANT.*G.R. Nos. 105289-90. July 21, 1994*

Ponente: PUNO, J.

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Accused Angelito Lualhati y Dominguez was convicted by the Regional Trial Court of Valenzuela, Metro Manila,[1] of the crimes of Murder for the killing of Ernesto Vertudazo and for violation of P.D. 1866 (Illegal Possession of Firearm). For the murder charge, accused was made to suffer the penalty of reclusion perpetua and to indemnify the heirs of Ernesto Vertudazo the sum of fifty thousand pesos (P50,000.00). For violation of P.D. 1866, accused was sentenced to suffer the penalty of reclusion perpetua and to pay the costs of the suit.

The prosecution evidence established the following facts:

Juliliuto Pentuyen and Ernesto Vertudazo were factory workers at Stayman Plastic Manufacturing Corporation, located at Industrial Road, Karuhatan, Valenzuela, Metro Manila. On August 18, 1991, at around 6:30 p.m., Pentuyen and Vertudazo left the factory and went to a nearby store where they bought and drank two (2) bottles of beer. Accused Angelito Lualhati, together with four (4) companions who were also drinking beer in the same store, approached them and told Pentuyen: "Pare, mayabang ang kasama mo." Pentuyen defended Vertudazo and replied that the latter has not done anything wrong. Sensing that trouble may erupt, Pentuyen and Vertudazo immediately consumed their beer, left the store, and headed back towards the factory.[2]

They were, however, followed by accused Lualhati and his two (2) companions. Violence then ensued. Without any provocation, Lualhati slapped Vertudazo's face twice. Pentuyen tried to pacify Lualhati and, at the same time, held back Vertudazo who wanted to strike back.[3]

Realizing that they were outnumbered, Pentuyen and Lualhati proceeded on their way. Suddenly, they heard a gunshot from behind. Pentuyen ran towards the direction of the factory. He reached the factory alone. Vertudazo did not make it.[4]

The killing of Vertudazo was witnessed by Antonio Mariquit, a security guard of the factory. After accused Lualhati fired a shot in the air, he was faced by Vertudazo. Confronted by a gun, Vertudazo raised his arms in capitulation. Notwithstanding, Lualhati shot Vertudazo on the chest. The deed done, Lualhati scampered away. The shooting incident was likewise witnessed by Pentuyen who was then at the factory gate and at a distance of ten (10) meters from the crime scene.[5]

Vertudazo did not instantly die. He continued walking and was able to reach the factory gate where he finally collapsed. He was brought to the Fatima Hospital but was declared dead on arrival.[6]

Meanwhile, responding to a radio report they received about the shooting incident, P03 Fernando Arenas and Pat. Jerry Coyenichea immediately proceeded to Industrial Road, Karuhatan. From their inquiries, they learned that the victim has been brought to the hospital and that the shooting incident happened along Tercias Compound, an

alley leading to Industrial Road. Upon reaching the scene of the crime, they saw two (2) persons running away. The police officers ordered them to stop and frisked them. P03 Arenas recovered from Lualhati's waistband a .38 caliber "paltik" revolver.[7] They brought the two (2) suspects to the police headquarters where Lualhati was identified by eyewitnesses Pentuyen and Mariquit as the assailant.[8]

Consequently, Lualhati was charged with murder and violation of P.D. 1866 (illegal possession of firearm and ammunitions).[9]

The Information for Murder reads:

"That on or about the 18th day of August 1991, in the Municipality of Valenzuela, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause, with treachery and evident premeditation and with deliberate intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with an unlicensed handgun ERNESTO VERTUDAZO y TAYOM, thereby inflicting upon the latter serious physical injuries, which directly caused his death.

"Contrary to Law." (Rollo, p. 3)

Upon the other hand, the Information for Illegal Possession of Firearm and Ammunitions reads:

"That on or about the 18th day of August 1991, in the municipality of Valenzuela, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being a private person without any authority of law, did then and there wilfully, unlawfully and feloniously have in his possession and control one (1) cal. .38 revolver, Smith and Wesson (homemade), without serial number, with three (3) live ammunitions and two (2) spent shells of cal. .38 rev., without any purpose and intent of surrendering the same to the proper authority.

"Contrary to Law." (Rollo, p. 2)

The prosecution established the aforementioned facts by presenting three (3) witnesses, viz: Juliliuto Pentuyen, Antonio Mariquit and PO3 Fernando Arenas.

The version of the accused-appellant is entirely different. Lualhati testified that on said date and time, he went to a store located along Industrial Road, Karuhatan, Valenzuela, M.M., to buy some cigarettes. Upon reaching the store, he saw two (2) drunk men, namely, Juliliuto Pentuyen and Ernesto Vertudazo. Pentuyen approached him and introduced himself. Whereupon, Vertudazo reproached Pentuyen and said: "Pare, huwag mong pansinin 'yan. Wala 'yan." Sensing that Vertudazo did not take to him, Lualhati remarked: "Pare, minasama yata ng kasama mo ang paglapit mo sa akin." Pentuyen reassured him, saying: "Pare, huwag kang mag-alala, lasing na kasi." Pentuyen then wrapped his arm around his shoulder and invited him for a drink. He accepted the beer bottle offered to him. All the while, Vertudazo was giving him a dagger look. Alarmed, he consumed the bottle of beer, turned to Pentuyen, and said: "Pare, tama na itong iniinom natin. Masama yata ang tingin ng kasama mo." Pentuyen agreed and requested him to accompany them on their way home. He acceded to the request.

While they were walking, Vertudazo remarked: "Pare, kanina ko pa napapansin, parang mayabang ang kilos mo." Vertudazo then began to rush towards him but Pentuyen was able to hold on to the latter. Vertudazo tried to free himself from Pentuyen's hold and while doing so, Vertudazo continued cursing him. Finally, Vertudazo was able to free himself, threatened him, "Pare, babalikan kita," and left.

Pentuyen approached him and asked for an apology. They proceeded on their way to the factory. While walking, they saw Vertudazo coming towards them, holding a gun. Vertudazo remarked: "Patay ka ngayon. Titingnan ko ang tapang mo." Before Vertudazo could fire the gun, he grabbed Vertudazo's hand and they grappled for the gun which accidentally went off. Eventually, however, Lualhati was able to wrest the gun away from Vertudazo. He

pointed the gun at Vertudazo, intending frighten the latter. However, the gun again unintentionally fired. He did not know whether Vertudazo was hit. He ran towards the direction of his residence. He found it closed and proceeded to his friend's house. The mother of his friend advised him to surrender to the police authorities. He surrendered to barangay captain Boy de Guia who was then with Pat. Arenas. With his hands raised, he approached the barangay captain who took the gun tucked in his waistline.[10]

After a joint trial, the court a quo rendered a decision, dated March 25, 1992,[11] finding the accused guilty as charged. The dispositive portion reads:

"WHEREFORE, in view of the foregoing, the Court finds the accused guilty of the crime of Murder with the use of an unlicensed firearm, and hereby sentences him to suffer the penalty of reclusion perpetua, to indemnify the heirs of Ernesto Vertudazo y Tayom in the sum of P50,000.00. For violation of P.D. 1866, the accused is imposed the penalty of reclusion perpetua also and to pay the costs of the suit.

"The .38 caliber 'paltik' with the live ammunitions and spent shells are confiscated in favor of the government.

"SO ORDERED." (Rollo, at p. 25)

Hence, the present appeal. Accused-appellant contends that:

I

THE LOWER COURT ERRED IN NOT HOLDING THAT ACCUSED-APPELLANT ACTED IN SELF-DEFENSE.

II

THE LOWER COURT ERRED IN APPLYING TREACHERY AS A QUALIFYING CIRCUMSTANCE.

III

THE LOWER COURT ERRED IN CONVICTING ACCUSED OF THE CRIME OF VIOLATION OF P.D. 1866.

Anent the first assignment of error, accused-appellant argues that the trial court erred in finding that he fired upwards first. He claims he never made the allegation as it was the prosecution witnesses who did.

The argument hardly impresses. It bears emphasis that by advancing the defense that the killing of Vertudazo arose out of an impulse to defend one's self, the onus probandi rests upon accused-appellant to prove by clear and convincing evidence the elements thereof, i.e., that there was unlawful aggression on the part of the victim; that reasonable necessity of the means was employed to prevent or repel it; and, that there was lack of sufficient provocation on the part of the person defending himself.[12] In the case at bench, accused-appellant's evidence failed to convince this Court of the existence of any of the foregoing elements.

The uncorroborated story of accused-appellant stretches human credulity too far. For instance, accused-appellant alleged that Pentuyen, whom he has never met before, approached him at the store and offered him a drink. All the while, when things were heating up, Pentuyen was the one profusely apologizing for the boorish behavior of his friend Vertudazo. However, during the trial, he maintained that Pentuyen deliberately fabricated the circumstances which led to the killing of Vertudazo. Further, accused-appellant claims that when he noticed that the victim did not welcome his presence at the store, he quickly finished his drink and decided to go home. In the next breath, however, he testified that he accompanied the two (Pentuyen and Vertudazo) on their way back to the factory. Having noticed from the start the alleged animosity harbored by the victim against him, why did

accused-appellant escort them home? Finally, accused-appellant claims that contrary to PO3 Arenas' testimony, he voluntarily surrendered himself and the subject gun to barangay captain Boy de Guia in the presence of PO3 Arenas. However, no effort was exerted by accused-appellant to present the barangay captain to corroborate his claim.

We have carefully and closely examined the testimonies of the prosecution eyewitnesses and find that their account of the shooting incident corroborated each other in all material points. Noticeably, the defense was not able to prove any ill-motive on the part of these witnesses which could have impelled them to testify falsely against him. Indeed, Pentuyen and Mariquit admitted during the trial that prior to the shooting incident, accused-appellant was a complete stranger to them.

What clearly appears on the record is the fact that accused-appellant, face to face with Vertudazo, pointed his gun at the latter and unwaveringly shot him on the chest. He then fled from the scene of the crime after accomplishing his purpose.

Anent the second assigned error, accused-appellant contends that he could only be held liable for homicide since the prosecution failed to prove that treachery attended the commission of the crime.

There is no merit in the contention. At the time of the assault, the victim was unarmed and his arms were already raised in capitulation. There was no sufficient provocation on the part of the victim which would have placed him on guard and prepared him for accused-appellant's assault. In *People v. Cruz*,^[13] we held that there is treachery if the commission of the crime was sudden and unexpected even if the armed attack was made face to face. Thus, under the circumstances, the victim was clearly not in any position to defend himself from the unreasonable and unexpected attack of accused-appellant.

In his third assignment of error, accused-appellant contends that the court erred in finding him guilty of illegal possession of firearm in the absence of any evidence showing that the gun recovered from him was an unlicensed firearm.

We agree. In the case of *People v. Damaso*,^[14] this Court ruled that in crimes involving illegal possession of firearm, the prosecution has the burden of proving the elements thereof, viz: the existence of the subject firearm, and the fact that the accused who owned or possessed the firearm does not have the corresponding license or permit to possess the same.

In the case at bench, no documentary or testimonial evidence was adduced by the prosecution to prove that accused-appellant had no license or permit to possess the gun recovered from him. Such being the case, we hold that the trial court erred in convicting the accused for illegal possession of firearm under Section 1 of P.D. 1866.

IN VIEW WHEREOF, we AFFIRM the judgment of conviction rendered and sentence imposed by the trial court against accused-appellant ANGELITO LUALHATI y DOMINGUEZ in Criminal Case No. 474-V-91 for the killing of Ernesto Vertudazo. However, for insufficiency of evidence, accused-appellant is hereby ACQUITTED of the crime of illegal possession of firearm in Criminal Case No. 473-V-91. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Mendoza, JJ., concur.

[1] Branch 172, presided by Judge Teresita Dizon-Capulong.

[2] TSN, October 4, 1991, pp. 4-5; TSN, October 14, 1991, pp. 2 & 4.

- [3] TSN, October 4, 1991, pp. 8-9; TSN, October 14, 1991, pp. 5-6.
- [4] TSN, October 4, 1991, pp. 10-11.
- [5] TSN, October 4, 1991, pp. 11-12; TSN, October 14, 1991, pp. 3-4; TSN, November 18, 1991, pp. 8-9, 11.
- [6] TSN, October 14, 1991, pp. 4-5.
- [7] TSN, January 24, 1992, pp. 4-12.
- [8] TSN, October 14, 1991, pp. 6, 8-9; TSN, November 18, 1991, p.16.
- [9] Docketed as Criminal Case No. 474-V-91 and 473-V-91, respectively.
- [10] TSN, February 26, 1992, pp. 4-21.
- [11] Rollo, pp. 18-25.
- [12] Art. 11 (1), Revised Penal Code.
- [13] G.R. No. 94375, September 4, 1992, 213 SCRA 611.
- [14] G.R. No. 93516, August 12, 1992, 212 SCRA 547.

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