

## THIRD DIVISION

[ G.R. No. 130941, August 03, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
PONCIANO AGLIPA, ACCUSED-APPELLANT.**

### D E C I S I O N

**PANGANIBAN, J.:**

The burden of proof shifts to the person invoking self-defense, who, with clear and convincing evidence, must establish all the following requisites: (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 claiming self-defense. Upon failure to establish these requisites, conviction is inevitable because the accused, by setting up self-defense, admits being the author of the killing.

#### The Case

Ponciano Aglipa appeals the July 29, 1996 Decision<sup>[1]</sup> of the Regional Trial Court of Cebu City (Branch 18), finding him guilty of murder and frustrated murder.

In an Information dated August 30, 1995, Asst. Provincial Prosecutor Benedicto C. Nazareno charged appellant with murder allegedly committed as follows:

“That on or about the 24th day of April, 1995, at about 7:00 o’clock in the evening, more or less, at Barangay Mindanao, Municipality of Malabuyoc, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, strike and hit Solano Macion with the use of an iron bar, thereby hitting the victim at the back of his head which caused his instantaneous death.”<sup>[2]</sup>

In another Information, bearing the same date and signed also by Prosecutor Nazareno, appellant was charged with frustrated murder as follows:

“That on or about the 24th day of April, 1995, at about 7:00 o’clock in the evening, more or less, at Barangay Mindanao, Municipality of Malabuyoc, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, strike and hit Severina Macion with the use of an iron bar, thereby hitting the victim on her hand and the back portion of her head, thus performing all the acts of execution which would have produced the crime of [m]urder, as a consequence, but nevertheless, did not produce it by reason of a cause independent of his

will, that is: by the timely and able medical assistance rendered to the victim which prevented her death.”<sup>[3]</sup>

Assisted by Atty. Gines Abellana, appellant pleaded not guilty to both charges when arraigned on October 10, 1995.<sup>[4]</sup>

The two cases were tried jointly. In view of the claim of self-defense, the parties agreed that the defense would, as it did, present its evidence ahead of the prosecution. After trial in due course, the court *a quo* rendered its 26-page Decision, the dispositive portion of which reads as follows:

“WHEREFORE, in view of all the foregoing considerations, JUDGMENT is hereby rendered convicting the accused Ponciano Aglipa of the crimes of [m]urder and [f]rustrated [m]urder and accordingly, he is hereby punished to suffer the penalty of RECLUSION PERPETUA for the crime of [m]urder and the penalty of six (6) years of prision correccional, as minimum to ten (10) years of prision mayor, as maximum in the crime of [f]rustrated [m]urder. The accused is further directed to indemnify private complainant in the sum of P50,000.00 for the death of Solano Macion and the sum of P2,000.00 for the injuries private complainant Severina Macion sustained.”<sup>[5]</sup>

Hence, this appeal.<sup>[6]</sup>

### **The Facts**

#### **Prosecution’s Version**

In its Brief,<sup>[7]</sup> the Office of the Solicitor General presents the prosecution’s version of the facts in this wise:<sup>[8]</sup>

“In the early afternoon of April 24, 1995, Severina Macion was at home in Barangay Mindanao, Malabuyoc, Cebu, when her son, Erick, informed her that their goats had eaten the corn plants of the Aglipas. Severina told Erick that they would report the matter to the Barangay Captain as soon as his father would arrive (TSN, pp. 3-4, April 15, 1996).

“Later, at about 5:00 o’clock in the afternoon, Severina’s husband, Solano Macion, arrived. The couple went to the house of the Barangay Captain, Nemesio Pielago. When they arrived there, they found that the Barangay Captain was not at home. They, however, decided to wait for him for a while. As they waited for the Barangay Captain, appellant Ponciano Aglipa suddenly appeared and stood on the road in front of the Barangay Captain’s house. Appellant shouted at Solano challenging him to a ‘buno’ (fight to the death). Solano answered saying he was not afraid of him. Severina advised her husband not to mind appellant so as to avoid trouble. Solano ignored appellant’s challenge. Appellant, however, kept on shouting at Solano and challenging him to a fight. Severina confronted appellant asking him why he followed them, kept on challenging Solano to a fight, and looked for trouble. Appellant was pacified by the wife of the Barangay Captain who admonished him to leave. To avert any fight, Severina pulled Solano inside the house of the

Barangay Captain. Appellant then went home (TSN, pp. 4-7, April 15, 1996; TSN, p. 8, February 5, 1996).

"Becoming impatient of waiting for the Barangay Captain, Severina told Solano that they better go home and come back later. While walking home along the road, Solano and Severina dropped by the sari-sari store of Honorata Cedeño and bought biscuits for their children. About 20 meters away, appellant shouted from his house challenging Solano to a fight. Appellant's parents, Daniel Aglipa and Anecita Aglipa, and his brother, who were also in their house, joined appellant in challenging and demanding from the Macion couple payment for the Aglipa's damaged corn plants. Anecita shouted at the Macions that they be paid their damaged corn plants immediately, while appellant and his father challenged Solano to a 'buno' (fight to the death) (TSN, pp. 9-11, February 5, 1996; TSN, pp. 7-9, April 15, 1996).

"Sensing danger, Solano advised Severina to go ahead and take their children inside their house because he would still urinate. As it was already dark, Severina got a kerosene lamp and went back to her husband, who stood [a] few meters away from the door of Honorata's house. While Solano was urinating, Severina stood behind him holding the kerosene lamp. Momentarily, appellant, who came from nowhere, suddenly appeared passing behind Honorata's house. Without saying a word, appellant hit Solano with an iron bar at the back of his head. Solano slumped with his face down. Daniel Aglipa and Anecita Aglipa, who were in their yard, shouted at their son and urged him by saying: "Patya na! Patya na!" (kill him, kill him). Appellant hit Solano repeatedly with a crowbar which caused Solano's instantaneous death. Severina rushed to the aid of her husband but she too was hit by Ponciano at the back of her head. Severina instinctively turned around to face appellant and attempted to wrest the crowbar from him but appellant hit her on the hand holding the kerosene lamp. Bloodied and feeling dazed, Severina shouted at Honorata for help. When appellant was about to strike again at Severina, Honorata picked up a stone and hurled it at appellant. Hit by the stone hurled by Honorata, appellant scampered away bringing with him the crowbar (TSN, pp. 11-20, February 5, 1996; TSN, pp. 9-15, April 15, 1996).

"Because of the blows Severina sustained, she became unconscious. Honorata pulled Severina inside her (Honorata's) house. When the Barangay Captain arrived, he accompanied Honorata and several barangay tanods in taking Severina to the hospital. The cadaver of Solano Macion was left behind watched by other barangay tanods. Severina was admitted at the Mariano Jesus Cuenco Memorial Hospital in Malabuyoc, Cebu. The Barangay Captain and the Barangay Tanods proceeded to the nearby Police Station to report the crimes (TSN, pp. 20-25, February 5, 1996; TSN, pp. 15-16, April 15, 1996).

"Dr. Neal Anthony Singco, medical officer of the Mariano Jesus Cuenco Memorial Hospital, attended to Severina Macion (TSN, pp. 24-27, March 28, 1996). Dr. Singco issued a Living Case Report (Exh. 'F', p. 193, Record) which showed that the following injuries were sustained by Severina:

**'FINDINGS:**

- 1) Laceration 2 cm. ( R ) parietal area.
- 2) Laceration 3 cm. occipital area.
- 3) Incision – 2 cm. Forehead.
- 4) Laceration ( R ) thumb.
- 5) Incision wound 1 cm. (L) hand.'

"Dr. Elvira L. Grengia, Municipal Health Officer of Alegria, Cebu, conducted the autopsy on the cadaver of Solano Macion (TSN, pp. 4-5, March 28, 1996). The Medico-Legal Certificate (Exh. 'D', p. 155, Record) she issued, indicated the following injuries sustained by him, to wit:

**'FINDINGS:**

- 1) Lacerated wound measuring 5 inches in length at the occipital area of the head.
- 2) Lacerated wound 4 inches in length, at the right side of the forehead.
- 3) Lacerated wound, 4 inches in length, right eyebrow.
- 4) Lacerated wound, 1.5 cms. right upper eyelids.
- 5) Fracture of the skull at the left parieto-occipital area, measuring about 6 inches in length, 4 inches in diameter exposing the brain tissue.'

"PO2 Mario Paler, a PNP member of Malabuyoc, Cebu was instructed by his Chief of Police to arrest one Ponciano Aglipa, a suspect in a murder in Barangay Mindanao, Malabuyoc, Cebu. PO2 Paler was informed that the suspect was about to board an ABC Bus Liner. PO2 Paler, accompanied by the Chief of Police, immediately proceeded to the house of appellant's friend in Barangay Montañeza to look for appellant there. They were, however, told that appellant had escaped. They proceeded towards the school building nearby. While they were resting there, an ABC Liner bus passed by and stopped at a grassy portion of the road. Suspecting that appellant had boarded the bus, they proceeded towards the bus. True enough, they found appellant on board the ABC Liner bus and arrested him. They brought appellant to the police station for investigation (TSN, pp. 2-13, February 19, 1996)."

**Defense's Version**

Invoking self-defense, appellant narrated the facts in this manner:<sup>[9]</sup>

"The accused and his parent testified that Solano Macion challenged them by shouting at the yard of the house of Honorata Cedeño. Since Solano Macion called for the accused, the latter went down from their house and approached them and when Solano Macion saw the accused, he pulled out his gun and fired but the accused evaded by docking and in defense of himself he picked a coco lumber and without hesitation struck the hand of Solano Macion that held the gun but it was at this moment that Macion crouched and his head was hit by the wooden lumber instead. He fell to the ground hitting his head on a stone with sharp edges.

"Then, the wife of Solano Macion, Severina, picked the gun which was released by Solano Macion. In anticipation that she [would] use it against the accused, the latter also struck her hand with the same lumber. Since he was standing and she was crouching in her attempt to pick-up the gun, the back of her head was also hit which [was] injured.

"The barangay [captain] was presented by the accused only to prove that he knew that Solano Macion owned a gun."

### **Trial Court's Ruling**

Rejecting the claim of self-defense, the trial court ruled as follows:

"It is evident from the record that victims Solano Macion and Severina Macion did not commit any act of aggression against the accused. It was Ponciano Aglipa who was the aggressor for he challenged Solano Macion to a fight to death (buno) at the house of Barangay Captain Nemesio Pialago where spouses Solano Macion and Severina Macion went to ascertain the extent of the damage caused by their goats on the corn plants of Daniel Aglipa, father of the accused. It was Ponciano Aglipa who attacked and assaulted the victims while Solano Macion was urinating near the house of Honorata Cedeño and Severina Macion holding a lamp. While their backs were towards the place where Ponciano Aglipa came from, both victims were attacked and assaulted by Ponciano Aglipa. Honorata Cedeño belied the claim of Ponciano Aglipa that at that time Solano Macion had carried a firearm in his hand."<sup>[10]</sup>

### **The Issues**

Appellant faults the court *a quo* with the following alleged errors:

"1. The court below erred in finding x x x the accused guilty of the crime of murder in [the] killing of Solano Macion and of frustrated murder in [the] wounding of Severina Macion.

"2. The court below erred in not appreciating the x x x self-defense interposed by the accused."<sup>[11]</sup>

In the main, the Court will resolve the following questions: (1) tenability of self-defense and (2) presence of treachery. In addition, the Court will also discuss the proper penalty.

### **The Court's Ruling**

The appeal has no merit. The Decision, however, should be modified in respect to the penalty for frustrated murder.

#### **First Issue:** **Self-Defense**

One who invokes self-defense admits responsibility for the killing. Accordingly, the burden of proof shifts to the accused who must then prove the justifying circumstance. With clear and convincing evidence, all the following requisites must be established: (1) unlawful aggression on the part of the victim, (2) reasonable