

THIRD DIVISION

[G.R. No. 121178, January 22, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO
CAHINDO, ACCUSED-APPELLANT.
D E C I S I O N**

MELO, J.:

For the killing of one Militon Lagilles, Romeo Cahindo was charged with murder, thusly:

That on or about the 23rd day of September, 1989, in the City of Tacloban, 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 wilfully, unlawfully, and feloniously attack and wound MILITON LAGILLES, with the use of a deadly weapon known as "sarad" which the accused had provided himself for the purpose thereby inflicting upon him hack wounds on his head and deltoid area near shoulder joint of his body which caused his death.SPPED-CALR

Contrary to law.

(p. 5, Rollo.)

After trial, Cahindo was found guilty as charged in a decision dated September 20, 1993, and he was accordingly meted out the penalty of reclusion perpetua, aside from being ordered to indemnify the heirs of the victim in the amount of P50,000.00, without subsidiary imprisonment in case of insolvency (p. 18, Rollo).

Dissatisfied, accused-appellant has interposed the instant appeal, claiming that the trial court erred in giving more weight to the prosecution's evidence instead of believing his protestations of self-defense.

The facts of the case, as found by the trial court and as borne out by the evidence, are as follows:

The evidence for the prosecution consists of the testimonies of Dr. Rogelio Daya, Lucila Lagilles, Cristilyn Lagilles and Anatolio Bohol. The evidence for the people seeks to establish that at about 7 o'clock in the evening of September 23, 1989 at Baybay District, San Jose, Tacloban City, while the deceased victim Militon Lagilles was urinating at the yard of his house the accused Romeo Cahindo approached the victim from behind and with a scythe locally known as "sarad" held in his (accused) right hand delivered hacking blows upon said victim hitting the latter at his right shoulder and on top of the head, after which the deceased

victim fell down on the ground and died.

The post mortem examination (Exhibit-"B") issued by Dr. Rogelio Daya, Assistant City Health Officer of Tacloban City shows that the deceased Militon Lagilles sustained the following injuries which resulted in his death, to wit:

- 1) Hacking wound, (R) deltoid area, upper portion anterior aspect, near shoulder joint, 22 cms. long, 5.5 cms. deep, 5 cms. wide;
- 2) Hacking wound, scalp, 16 cms. long, 3 cms. wide, skull deep, extending from frontal area to occipital area.

Cause of Death:

Hemorrhage due to hacking wounds.

Prosecution witness Cristilyn Lagilles and Anatolio Bohol revealed that immediately prior to the hacking incident, the accused challenged the deceased to a fight, which the victim obviously did not mind. Nonetheless, the accused persisted in his criminal designs and hacked the victim to death. Said prosecution witnesses further testified that before the accused hacked the victim, the latter was heard uttering the statement — "I will not fight you, don't do it, don't do it". Said prosecution witnesses could not have erred as they were barely two armslength from the scene of the crime. After inflicting the fatal wounds on the victim, the accused immediately ran away from the scene of the crime. This significant piece of evidence was, surprisingly, not denied by the defense, hence admitted.

According to said witnesses, at the time accused challenged the deceased victim to a fight, the former was drunk. While the hacking incident was taking place, prosecution witnesses Cristilyn Lagilles and Anatolio Bohol were immobilized with shock, although Lagilles was able to shout for help. Only after the victim had fallen down to the ground and his assailant fled, that witness Anatolio Bohol regained his composure and rushed and ran towards Costa Brava to fetch the husband of Cristilyn Lagilles, Danilo Lagilles, who upon arrival immediately rushed the victim to the hospital, but the victim was dead on arrival at the hospital.

(pp. 13-14, Rollo.)

Accused-appellant argues that he should have been exculpated on the ground of self-defense. Having invoked such justifying circumstance, accused-appellant is deemed to have necessarily admitted having killed the victim (People vs. Besana, Jr., 64 SCRA 84 [1975]). The burden of proof is thereupon shifted to him to establish and to prove the elements of self-defense (People vs. Nuestro, 240 SCRA 221 [1995]) by clear and convincing evidence (People vs. Boniao, 217 SCRA 653 [1993]). For exculpation, he must rely on the strength of his own evidence and not on the weakness of the prosecution (People vs. Morin, 241 SCRA 709 [1995]).

The elements of self-defense are: (a) unlawful aggression on the part of the victim, (b) reasonable necessity of the means employed to prevent or repel it, and (c) lack