

THIRD DIVISION

[G.R. No. 114265, July 08, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GREGORIO MAGALLANES, ACCUSED-APPELLANT.**

D E C I S I O N

FRANCISCO, J.:

On September 29, 1991, at around three o'clock in the afternoon, the appellant, GREGORIO MAGALLANES, who was a "mananari" or gaffer of fighting cocks, trekked the road to the cockpit of Poblacion Sagbayan, Bohol. The appellant was in the company of several other cockfighting aficionados, among whom were Romualdo Cempron and Danilo Salpucial. While on their way, they passed by Virgilio Tapales who was drinking in the store of Umping Amores which was located on the elevated side of the road. Tapales hailed Cempron and invited him for a drink but the latter courteously refused as he was going to the cockpit. Tapales approached Cempron and conversed with him briefly. For some unknown reason, Tapales then directed his attention to the appellant who was walking a few steps behind Cempron. Tapales held the appellant by his shirt, slapped him and strangled his neck. But seeing a knife tucked in Tapales' waist, the appellant pulled out the knife and slashed at Tapales to loosen his grip. The appellant succeeded in wounding the face and neck of Tapales who let go of the appellant and fled for his life. Insatiated, the appellant pursued Tapales and when the latter fell, the appellant stabbed him several more times before uttering the following words: "you are already dead in that case".^[1] With that, the appellant stood up and rode on the motorcycle being driven by Danilo Salpucial. Later, the appellant surrendered to the police authorities of the town of Inabanga, Bohol.

For the death of Tapales, the appellant and Salpucial were charged as principal and accessory, respectively, of the crime of murder allegedly committed as follows:

"That on or about the 29th day of September, 1991, in the municipality of Sagbayan, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the first above-named accused as Principal, with intent to kill and without justifiable cause, with treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab with the use of a sharp-pointed, sharp-edges (sic) weapon (knife) one Virgilio Tapales y Melendres hitting and injuring the vital parts of the body of the victim which resulted in the victim's instantaneous death; that the second above-named accused, as Accessory, having knowledge of the commission of the crime of Murder, but without having participated therein either as Principal or as an Accomplice, did then and there willfully, unlawfully, feloniously and knowing (sic) take part in said crime after the commission thereof, to wit: by allowing accused Gregorio Magallanes to, and taking him on a,

(sic) backride on the motorcycle which accused Danilo Salpucial was driving and operating, in order to flee from the scene of the crime; x x x"

[2]

During arraignment, the appellant expressed his willingness to enter a plea of guilty to the lesser offense of homicide with the mitigating circumstances of plea of guilty and voluntary surrender; Salpucial, on the other hand, pleaded not guilty to the charges against him. The prosecution refused to lower the charge from murder to homicide, hence, trial ensued after which, a decision was rendered finding the appellant guilty of the crime of murder and acquitting Salpucial on the ground that the prosecution had failed to prove his guilt beyond reasonable doubt. The dispositive portion of said decision is quoted hereunder:

"PREMISES CONSIDERED, the Court finds the accused Gregorio Magallanes GUILTY of the crime of Murder punished under Article 243 of the Revised Penal Code and hereby sentences him to suffer an imprisonment of RECLUSION PERPETUA with the accessories of the law and to pay the cost.

"The accused Gregorio Magallanes is further ordered to indemnify the surviving spouse Nathaline Tapales in the amount of P50,000.00 representing indemnity, P50,000.00 representing moral and exemplary damages, P31,300.00-- burial and incidental expenses relative to the death of Virgilio Tapales and P3,000.00 representing attorney's fees, in all instances, without subsidiary imprisonment in case of insolvency.

"x x x

x x x

x x x.

"Relative to the accused Danilo Salpucial judgment is hereby rendered ACQUITTING the aforementioned Danilo Salpucial of the crime as charged, with cost de officio.

"x x x

x x x

x x x."

[3]

Before us now is the appeal interposed by Gregorio Magallanes where he invokes the justifying circumstance of self-defense in his favor, and contends, in the alternative, that he should be convicted of the crime of homicide only and not murder.

Anent the claim of self-defense, we reiterate herein the time honored doctrine that although it is a cardinal principle in criminal law that the prosecution has the burden of proving the guilt of the accused, the rule is reversed where the accused admits committing the crime but only in defense of oneself. In the latter case, the burden is shifted to the accused who must prove clearly and convincingly the following elements of self-defense: (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.[4]

The appellant asseverates that he was justified in stabbing Tapales as he was merely defending himself from the former's unlawful and unprovoked aggression. But the prosecution witnesses are one in testifying that it was the appellant who mercilessly

pursued the already wounded Tapales, and when the latter fell to the ground, inflicted several more stab wounds on his person including a fatal blow to his neck.

Engineer Sabino Tubal testified as follows:

Q. When you saw the two, Gregorio Magallanes and Virgilio Tapales, what did you notice?

A. I saw Virgilio Tapales already bleeding and Gregorio Magallanes bringing a knife.

xxx xxx xxx

COURT:

Did you actually see the stabbing incident?

A. Yes, your Honor.

COURT:

Who stabbed the victim?

A. It was Gregorio Magallanes who stabbed the victim.

Q. When you say victim, you are referring to Virgilio Tapales?

A. Yes, sir.

Q. Now you said that it was Gregorio Magallanes who stabbed the victim, why did not the victim run?

A. He ran but he was chased by Gregorio Magallanes.

Q. When Virgilio Tapales fell what happened next?

A. This Gregorio Magallanes was on top of the victim and then Gregorio Magallanes stabbed the throat of the victim.

Q. How far were you from the place where Virgilio Tapales fell and according to you Magallanes rode on top of the victim and stabbed his neck?

A. Almost two meters distance.

Q. Did you hear any word from Gregorio Magallanes at that time?

A. When Gregorio Magallanes already stood up that was the time he said saying (sic), 'You are already dead in that case.'"^[5]

The foregoing was corroborated by another witness, Esterlita Amodia-Tubal:

Q. Please tell the court briefly the first thing that you saw?

A. At that time I and my helper were doing some gardening work infront (sic) of our house and all of a sudden my helper called me this way: 'Nang Neng, what is that?' And I turned my back and saw Virgilio Tapales who was chased by Gregorio Magallanes.

Q. How far were you from or rather to Magallanes when the latter chased Virgilio Tapales?

A. More or less eight meters.

Q. Was Virgilio Tapales over run (sic) by Magallanes in the chase?

A. I saw that Gregorio Magallanes stabbed Virgilio Tapales.

Q. How many times did you see Magallanes stabbed (sic) Virgilio Tapales?

A. One time.

Q. And what happen (sic) to Virgilio Tapales?

A. Virgilio Tapales was at that time still running being chased by Magallanes. There is a fence and at the end of that fence there was a guava tree. It so happen that this Virgilio Tapales run towards that tree and this Gregorio Magallanes stabbed and slashed the neck of Virgilio Tapales at the upper portion of the heart just above the left side of the face and at that time I had my children with me so I run to our store to put my children in safe condition. When I went back to the store I saw my husband coming from our ricemill and because I was afraid that my husband would be stabbed because I really saw Gregorio Magallanes slashed (sic) the neck of Virgilio Tapales I shouted to my husband that he might be stabbed.

COURT:

Which happened first the stabbing or the slashing?

A. The stabbing your Honor followed by slashing on the left face and neck."^[6]

Clearly, whatever act of aggression that was initiated by Tapales against the appellant had already ceased as demonstrated by the fact that Tapales was running away from the appellant. The tables were turned when the appellant chased Tapales with the obvious intent of stabbing him. At this juncture, the appellant had assumed the role of aggressor, thus, his claim of self-defense cannot obviously prosper. In *People vs. Tampon*^[7] we ruled that:

"Even granting arguendo that the initial act of aggression came from Entellano (the victim) as claimed by the appellant, we still cannot sustain his plea of self-defense. As testified by the appellant, he grappled with Entellano for the knife and was able to take possession of the same. At this point, it was no longer necessary for appellant to stab Entellano in order to protect himself. His subsequent act of stabbing the now unarmed Entellano belies his claim that he acted in self-preservation and indicates nothing more than a perverse desire to kill. Thus, this Court held in the case of *People v. So*, that '[a]fter appellant successfully wrested the knife from Tuquero, the unlawful aggression has ceased, the one making the defense has no more right to kill or even wound the former aggressor.'"

^[8]

Another factor which militates against the appellant's claim of self-defense is the nature and number of wounds suffered by Tapales. Dr. Pancraccio Garay, the Rural Health Physician who examined Tapales' dead body, testified that the same sustained seven (7) stab wounds in all caused by a sharp bladed weapon.^[9] And it

is an oft-repeated rule that the presence of a large number of wounds on the part of the victim negates self-defense and instead, indicates a determined effort to kill the victim.^[10] The appellant, however, seeks exception to this rule by pointing out the superficial nature of majority of the wounds inflicted on Tapales, and the fact that of the seven (7) wounds, only one (1) was fatal enough to cause his death. We disagree.

According to the testimony of Dr. Garay, Tapales suffered the following injuries:

Q. Will you please read into the records the injuries that you found?

A. First we have incised wound 10 to 14 cms. 10 x 4 cms. located at the base of the skull extending from the posterior portion of the right ear down to the nape.

Q. Will you please point to the court using yourself as the person examined that location of the wound.

A. Here.

INTERPRETER:

Witness pointing to the base of the skull up to the nape of the neck.
Witness showing it to the court.

Q. What is the second injury you found in the person of Virgilio Tapales?

A. Second is incised wound about 20 cms. by 7 cms. extending from the occipital (sic) area of the head passing the left ear cutting it into halves.

COURT:

In layman's language how do you call that?

A. Ear.

x x x

x x x

x x x.

Q. What other injuries did you find?

A. 7 cm by 3 cm by 6 cm stabbed (sic) wound at the anterior area of the neck at the superior border of the manubrium.

x x x

x x x

x x x

Q. What was the fourth injury you found?

A. Stabbed (sic) wound 5 x 1 x 5 cm. penetrating the thoracic (sic) area hitting the spinal column.

Q. Where is that?

A. It is found at the back.

x x x

x x x

x x x

Q. What was the next wound?