

THIRD DIVISION

[G.R. No. 177246, September 25, 2017]

**ANTONIO A. SOMBILON, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

BERSAMIN, J.:

"The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat."^[1]

The Case

Under review is the decision promulgated on March 28, 2007,^[2] whereby the Court of Appeals (CA) affirmed the conviction of the petitioner for homicide by the Regional Trial Court (RTC), Branch 82, in Odiongan, Romblon in relation to the fatal shooting of the late Gerardo F. Amerilla on November 18, 1997.^[3] The CA disposed as follows:

WHEREFORE, premises considered, the Appeal is hereby **DENIED** and the assailed Decision of the court a quo is **AFFIRMED** with **MODIFICATION**, imposing upon the Appellant, ANTONIO SOMBILON, the indeterminate prison term of **Eight (8) Years of Prison Mayor, as minimum, to Fourteen (14) Years and Eight (8) Months of Reclusion Temporal, as maximum.**

SO ORDERED.^[4]

Antecedents

On February 2, 1998, the Office of the Provincial Prosecutor of Romblon charged the petitioner with homicide under the following information, alleging:

That on or about the 18th day of November, 1997, at around 7:30 o'clock in the evening, in barangay Lanas, municipality of San Jose, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot with a caliber .45 pistol, one GERARDO F. AMERILLA, inflicting upon the latter gunshot wounds in different parts of his body which caused his untimely death.

Contrary to law.^[5]

Version of the Prosecution

At around 7:00 p.m. in the evening of November 18, 1997, Nelson Andres (Andres) was resting in the terrace of his house in Lanas, San Jose, Romblon when he noticed somebody passing through the gate. Instantly, he was startled by a gunshot, and he got up to see what was happening. It was then when he saw the person who had passed through the gate, whom he recognized to be the petitioner. The latter was pointing a gun at him, forcing him to nervously enter his house, shut the door behind him, turn off the lights and go upstairs together with his wife and daughter. Once inside his upstairs room, he peeked through the window and saw the petitioner striding back and forth in front of his house, shouting and firing his gun every now and then.^[6]

Meanwhile, the late SPO3 Gerardo Amerilla (Amerilla) and others, namely: Napoleon Martin (Martin), Jemuel^[7] Agustin (Agustin), Quennie Sacapaño and Edmund Escalante, were in the house of Martin also located in Lanas when they heard three gunshots being fired. Shortly thereafter, a certain Cris Cajilig came over to inform them that the petitioner was causing a commotion in the place of Andres.

Amerilla immediately left Martin's house,^[8] and arrived in front of the house of Andres by around 7:30 p.m.^[9] According to Andres, Amerilla, upon arriving at his house, asked the petitioner what his problem was all about, but the latter instantly fired his gun twice at Amerilla and the latter fell face down to the ground. Amerilla crawled towards the gate of Andres' house seeking his help, but no one could approach him because the petitioner stayed around for about 25 meters and prevented others from going to the victim's aid.^[10] Andres had a clear view of what transpired because of the illumination from a fluorescent lamp about 12 meters from where the victim was shot.^[11]

On his part, Agustin went to the house of Ulpiano Enrique right after Amerilla left the house of Martin. When Ulpiano told him that Amerilla had been shot, he returned to Martin's house and told the others about the shooting. On his way home, he found Amerilla lying in front of Andres' house. He approached Amerilla and held the latter's head and shoulder as he asked who had shot him. Amerilla pointed at the petitioner,^[12] who was then around 12 meters away from them.^[13] Realizing that Amerilla urgently needed medical help, he went back to Martin's house to tell the others that Amerilla must be brought to the hospital. Agustin and the others rushed to the house of Enrique to request his assistance in talking to the petitioner not to hurt them while they attempt to help Amerilla. Agustin recalled that when they were finally able to get near the fallen Amerilla, they found that he had already expired. On his part, Agustin proceeded to the police station and reported the fatal incident.^[14] Two police officers, PO2 Jose Sungcang, Jr. and PO2 Constantino Rufon, went to Lanas to investigate.^[15] With the help of Gerardo Enrique, the police officers boarded the body of Amerilla into a vehicle and brought it to the hospital for autopsy.^[16]

Dr. Ederlina Aguirre, the Chief of the San Jose District Hospital in San Jose, Romblon, conducted the autopsy. She found three gunshot wounds located at the victim's left ring finger, upper left part of the abdomen and lower part of his umbilical cord. She attested that a bullet had perforated the victim's large and small

intestines,^[17] but she opined that immediate medical attention could have saved his life.^[18]

The State also presented Marlon Alam who claimed that he had been contracted by the petitioner to kill Amerilla and Mayor Filipino Tandog of San Jose, Romblon; that the petitioner had given to him for that purpose a .357 caliber revolver and promised to pay P20,000.00 for the killing of Amerilla; that because he had not brought the gun on the night of the shooting of Amerilla, the petitioner had directed him to just stay in front of his house and to look out for Amerilla; and that the petitioner had spent two magazines-full of bullets in shooting Amerilla.^[19]

Version of the Defense

The petitioner, then the *barangay* chairman of Lanas, San Jose, Romblon, admitted shooting Amerilla but insisted that he had done so in self-defense. He narrated that upon arriving home in Lanas at around 7:20 p.m. on November 18, 1997, he found several of his constituents complaining about the selective lighting by the Tablas Island Electric Cooperative, Inc. (TIELCO); that as the *barangay* chairman, he had assured the complainants that he would address their concern by talking to Andres, the President of the Barangay Power Association (BAPA); that he had thus gone to see Andres at his house; that after airing the matter of selective lighting, Andres had appeared irritated and remarked that his decision as the BAPA President should prevail; and that because of the remarks of Andres, he had decided to leave after telling Andres that they would talk about the matter again the next day.^[20]

The petitioner testified that as he was about to exit through the gate of Andres, he was alarmed because he saw a person some 15 to 20 meters away aiming and firing a gun at him; that fearing for his own life, he had drawn his .45 caliber firearm and fired twice at his assailant;^[21] that after doing so, he had run home;^[22] that he had not recognized his assailant at the time because the place was too dark because all the lights had been shut off; that upon reaching his house, he had sought out Gerardo Enrique, a *barangay kagawad*, to instruct the latter to bring a lamp and to use his motorboat to transport the assailant to the hospital;^[23] that he had learned afterwards from one Michael Sombilon that the person he had shot was Amerilla;^[24] and that he went to Looc, Romblon the next morning to surrender himself to the police.^[25]

The Defense also presented Bienvenida Alam, Roque Ignacio and Rogelio Venus. Their collective testimony was that they were watching a movie at the house of the petitioner when they heard two gunshots followed by two more; and that after the last two gunshots, the petitioner had rushed inside the house and gone upstairs.^[26]

Judgment of the RTC

On March 3, 2005, the RTC rendered its judgment finding and declaring the petitioner guilty of homicide mitigated by the circumstance of voluntary surrender,^[27] decreeing:

WHEREFORE, premises considered, accused **ANTONIO SOMBILON** is found **GUILTY** beyond reasonable doubt of the crime of **HOMICIDE**.

Appreciated in his favor is a mitigating circumstance of voluntary surrender and with no aggravating circumstance. He is hereby sentence[d] to suffer the penalty of Reclusion Temporal in its minimum period, which is **TWELVE YEARS (12) AND ONE (1) DAY to FOURTEEN (14) YEARS AND EIGHT MONTHS**. He is likewise ordered to pay actual damages in the amount of **SEVENTY FIVE THOUSAND PESOS (P75,000.00)** and moral damages in the amount of **FIFTY THOUSAND PESOS (P50,000.00)**.

SO ORDERED.^[28]

The RTC doubted the petitioner's plea of self-defense because the gun the victim had supposedly fired at him had not been recovered. It is considered to be contrary to human experience that the petitioner should run home instead of towards his fallen victim to find out who his assailant had been if he had really acted in self-defense, he being the *barangay* chairman of the place. It made the following cogent observations:

A scrutiny of the evidences (sic) on record, it appeared that what actually transpired was that accused went to the house of Nelson Andres to confront him relative to the complaint of other residents who were not yet provided with electricity by the BAPA, the latter being the President thereof. A verbal tussle ensued. Accused fired his gun while walking back and forth of the house of Nelson Andres to scare the latter. The victim, after hearing gunshots, being a policeman, responded, and when he confronted the accused, he was shot twice.

If the victim was the one who shot the accused first, why is it that not one of the several witnesses testified that a gun was recovered at the scene of the crime. Likewise, if accused merely retaliated after he was shot once by the victim and acted in self-defense, why did he immediately run to his house and not to the fallen victim, which he claims, he did not recognize, he being the Brgy.Chairman of the place. He had to summon somebody else, to identify the man he shot and to bring him to the hospital if alive.^[29]

Decision of the CA

On appeal, the CA upheld the judgment of the RTC because the petitioner had not established his plea of self-defense, particularly the existence of the primordial element of unlawful aggression on the part of the victim, cogently stating:

Unlawful aggression is the first and primordial element of self-defense. Of the three requisites, it is the most important. Without it, the justifying circumstance cannot be successfully invoked. If there is no unlawful aggression, there is nothing to prevent or repel. *Unlawful aggression* refers to an attack or a threat to attack, positively showing the intent of the aggressor to cause injury. It presupposes not merely a threatening or an intimidating attitude, but an actual, sudden and unexpected attack or an imminent danger thereof, which imperils one's life or limb. Thus, when there is no peril, there is no unlawful aggression.

It now becomes very material to ascertain whether or not the Victim was

the unlawful aggressor? We answer this question in the negative. It bears stressing that, aggression, to be unlawful, must be actual and imminent, such that there is a real threat of bodily harm to the person resorting to self-defense. The recorded evidence in this case would depict clearly the absence of unlawful aggression on the part of the Victim.

Curiously, the Appellant did not even bother to discuss nor elucidate in his brief filed before this Court the existence of the elements of self-defense and their proper application in the instant case to justify his act.

[30]

Nonetheless, the CA concluded that the RTC erred in ignoring the provisions of the *Indeterminate Sentence Law* in fixing the minimum of the indeterminate sentence, and revised the penalty to imprisonment of eight years of *prision mayor*, as the minimum, to 14 years and eight months of *reclusion temporal*, as the maximum.

Hence, this appeal, in which the petitioner submits that:

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW WHEN IT AFFIRMED THE CONVICTION OF THE PETITIONER, CONSIDERING THAT THE DEFENSE WAS ABLE TO PROVE THAT THE PETITIONER ACTED IN SELF-DEFENSE WHEN HE SHOT THE DECEASED.

The petitioner posits that he established the concurrence of the elements of self-defense; and that Amerilla's very act of aiming his gun and shooting at him without any reason clearly constituted unlawful aggression.

In contrast, the Office of the Solicitor General (OSG) maintains that the present recourse was inappropriate considering that the petitioner thereby raises factual questions that were not within the province of a petition for review on *certiorari* under Rule 45 of the *Rules of Court*; and that both the RTC and the CA correctly ruled out self-defense in view of the eyewitness account of Andres and the findings of Dr. Aguirre.

Did the petitioner prove his having acted in self-defense in fatally shooting Amerilla?

Ruling of the Court

The appeal lacks merit.

The petitioner's admission of fatally shooting Amerilla required him to establish his plea of self-defense with clear and convincing evidence. This is because his admission of the killing required him to rely on the strength of his own evidence, not on the weakness of the Prosecution's evidence, which, even if it were weak, could not be disbelieved in view of his admission.[31]

Thus, the petitioner had to prove that the following elements of self-defense were present, namely: (1) the victim committed unlawful aggression amounting to actual or imminent threat to the life and limb of the person claiming self-defense; (2) there was reasonable necessity in the means employed to prevent or repel the unlawful aggression; and (3) there was lack of sufficient provocation on the part of the person claiming self-defense or at least any provocation executed by the person