

SECOND DIVISION

[G.R. No. 215748, November 20, 2017]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. PAUL DURAN, JR. Y MIRABUENO, ACCUSED-APPELLANT.

DECISION

CAGUIOA, J:

Before this Court is an appeal^[1] filed under Section 13, Rule 124 of the Rules of Court from the Decision^[2] dated June 2, 2014 (assailed Decision) of the Court of Appeals (CA), First Division in CA-G.R. CR-HC No. 05496. The assailed Decision affirmed the Decision^[3] dated February 22, 2012 of the Regional Trial Court of Cavite City, Branch 88 (RTC), in Crim. Case No. 160-09, finding herein accused-appellant Paul M. Duran, Jr. (Duran) guilty of the crime of Murder under Article 248 of the Revised Penal Code (RPC).

The Information charging Duran with Murder states as follows:

That on or about the 9th day of January, 2009, in the Municipality of Rosario, Cavite, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, using an unlicensed firearm, employing treachery and nocturnity, did, then and there, wilfully, unlawfully and feloniously shoot GILBERT GRIMALDO Y NERA on the back of his head and thereafter as the victim lay helpless and wounded on the ground with abuse of superior strength shot him another three times, inflicting upon the latter multiple gunshot wounds which cause (sic) his instantaneous death, to the damage and prejudice of the latter's heirs.

CONTRARY TO LAW.^[4]

Upon his arraignment, Duran entered a plea of "not guilty."^[5]

The Facts

Version of the Prosecution

The prosecution presented three witnesses, namely: Beverly C. Quilana (Quilana), eyewitness; Berly L. Grimaldo (Mrs. Grimaldo), the widow of the victim, Gilbert N. Grimaldo (Grimaldo), and Dr. Jocelyn Dignos (Dr. Dignos), the municipal health officer who performed the autopsy on the victim.

Quilana's testimony, as summarized by the RTC, is as follows:

Beverly C. Quilana testified that on January 9, 2009 at around 1:48 in the morning, she was awakened by someone calling for her, uttering "Ninang". At that time she was inside her house located in Ligdong 3,

Rosario, Cavite. She recognized the voice of the person as her godson named Gilbert Grimaldo. She then asked why. Grimaldo replied from outside saying "Ninang tulungan mo ako yung taong ito ay kinukursunada ako," "kinukursunada ako ng taong ito, me dala siyang baril". Then she opened the door for her godson. She then saw the accused Paul Duran shot Grimaldo with a .38 caliber revolver from behind at a distance of 2 1/2 feet. Grimaldo was hit at the nape, and then fell to the ground lying with his face down. Duran then left the place passing between their houses. Moments later accused returned and shot Grimaldo three more times to make sure that the latter was dead. Witness then started shouting and asking for help. At this point in time, witness saw the accused Duran ran away. They then called the police. According to this witness, Grimaldo was hit on the nape, back and head.

Witness further clarified that Grimaldo did not know that Duran was behind him because he was surprised when he was shot.

Witness identified the accused in open court. She is familiar with the accused for they were neighbors for six (6) years. She clarified, that she was able to see the accused because the place was illuminated by a fluorescent bulb placed outside the house.^[6]

Mrs. Grimaldo's testimony was stipulated upon and dispensed with as her testimony covered only her claim for damages.^[7] Dr. Dignos' testimony regarding the autopsy, the findings as to the cause of death and nature, location, and gravity of the injuries sustained by the victim, and the preparation and issuance of the death certificate, were also stipulated upon and admitted by the defense.^[8]

Version of the Defense

Duran invoked self-defense. His testimony, as summarized by the RTC, is as follows:

Witness testified that he used to peddle fish in Rosario, Cavite. On January 9, 2009 at around 2:15 to 2:45 a.m. while on his way to buy fish in Parañaque, he was blocked by two persons whose identity he did not know. One of this (*sic*) men who turned out to be the victim Gilbert Grimaldo poked a gun at him, and said that they only needed his money. That when Grimaldo attempted to get the money from his belt bag, he was able to hold the victim's right hand which was then holding the gun. Grimaldo then used his left hand to box his nape. Then they wrestled for the possession of the gun for more or less thirty seconds. Then he (Duran) was able to take the gun away from Grimaldo. When Grimaldo moved backward, he pulled the trigger of the gun and hit Grimaldo. At that time he was worried that the other guy might retaliate and that's the reason why he was able to pull the trigger of the .38 caliber revolver gun.

^[9]

Ruling of the RTC

The RTC found Duran guilty of the crime of Murder, qualified by treachery, and sentenced him to *reclusion perpetua*.^[10] In arriving at its decision, the trial court ruled:

Like alibi, self-defense is inherently a weak defense and can easily be fabricated. When the accused interposes self-defense, he thereby admits having caused the injuries of the victim. The burden of proof then shifts on him to prove, with clear and convincing evidence, the confluence of the essential requisites for such a defense, namely: a.) unlawful aggression on the part of the victim; b.) reasonable necessity of the means employed and to prevent or repel it; and c.) lack of sufficient provocation on the part of the person defending himself. The accused must rely on the strength of his own evidence and not on the prosecution's, for even if the latter is weak, it cannot be disbelieved after the accused has admitted the killing xxx.

x x x x

This Court is convinced that there was no unlawful aggression. Assuming that Grimaldo and his unidentified companion really tried to hold-up Duran, the latter's testimony shows that the aggression had already ceased when he (Duran) was able to successfully take the gun from the possession of Grimaldo.

Having now the possession of the gun, there was obviously no reason for him to shoot the victim successively because the unlawful aggression from the victim has stopped. Duran by his own admission stated that he shot Grimaldo four times. Hence, no unlawful aggression by the victim was shown. Be it remembered that the presence of said primary requisite is a condition sine qua non of the justifying circumstance of self-defense. Absent such, there could be no self[-] defense to speak of. The other two requisites need not be discussed.

On the part of the prosecution, it clearly proved the presence of intent to kill on the part of the accused. The fact that the shots fired by the accused were directed to the vital body parts of the victim, namely on the head and the chest, shows intent to kill.

In addition thereto, the testimony of eye witness Quilana is very credible. Witness saw vividly how the shooting incident happened, who the victim was - Gilbert Grimaldo and the perpetrator of the crime - herein accused Paul Duran.

x x x x

The qualifying circumstance of treachery is present in this case because accused shot the victim in a manner that the latter would not be able to defend himself, and the location and severity of the wounds inflicted on the victim belies the claim of self-defense.^[11]

Duran was further ordered to pay the heirs of the victim One Hundred Thousand (P100,000.00) as moral damages and Fifty Thousand Pesos (P50,000.00) in exemplary damages.^[12]

Duran appealed to the CA via Notice of Appeal^[13] dated March 12, 2012. Duran then filed his Brief^[14] dated September 25, 2012, while the plaintiff-appellee,

through the Office of the Solicitor General (OSG), filed its Brief^[15] dated February 4, 2013. Thereafter, the appeal was submitted for decision.^[16]

Ruling of the CA

The CA affirmed Duran's conviction *in toto*.^[17] On June 26, 2014, Duran brought the instant case before this Court via Notice of Appeal^[18] of even date.

In lieu of supplemental briefs, Duran and plaintiff-appellee filed separate manifestations respectively dated April 13, 2015^[19] and April 15, 2015,^[20] foregoing their right to file the same.

Issue

Whether or not Duran's guilt for the crime of Murder was proven beyond reasonable doubt.

The Court's Ruling

The appeal is partly meritorious.

There was no unlawful aggression

An accused who pleads self-defense admits the commission of the act charged as a crime. The burden of proving self-defense rests on the accused. He must prove by clear and convincing evidence the concurrence of the following elements: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) lack of sufficient provocation on the part of the person defending himself or at least any provocation executed by the accused claiming self-defense was not the proximate and immediate cause of the victim's aggression.^[21]

Unlawful aggression is an indispensable element of self-defense. Without unlawful aggression, self-defense cannot and will not be appreciated, even if the other elements are present.^[22] As held in *People v. Dolorido*^[23]:

Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. It "presupposes actual, sudden, unexpected or imminent danger - not merely threatening and intimidating action." It is present "only when the one attacked faces real and immediate threat to one's life." x x x^[24]

In *People v. Nugas*,^[25] the Court expounded on the kinds of unlawful aggression:

Unlawful aggression is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to

attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot.^[26]

The Court agrees with the RTC and CA that Duran was unable to prove the presence of unlawful aggression on the part of the victim. Even if Duran's account of an attempted robbery against him is to be believed, his testimony also shows that Grimaldo, albeit the initial aggressor, ceased to be the aggressor as Duran had successfully wrested the weapon from him. Thereafter, Duran shot the gun at Grimaldo four times; three of which hit Grimaldo on vital parts of his body.^[27] At this moment, actions of the accused were already done in retaliation and not self-defense. In retaliation, the aggression initiated by the victim had already ceased when the accused attacked him; in self-defense, the aggression from the victim is continuing.^[28]

Duran's own testimony is illustrative of the absence of unlawful aggression:

[Atty. Marjorie Ann C. Toledo (on direct examination)]

Q Before the killing incident, do you recall any unusual event that transpired?

A Yes, Ma'am, there was.

Q And, what was that?

A When my way was blocked by two persons, Ma'am.

Q Do you know these two persons?

A No, Ma'am.

Q What did they do when they blocked you?

A One of them poked the gun at me, Ma'am.

Q Who poked the gun at you?

A That Grimaldo, I think, Grimaldo, Ma'am.

Q And that was the victim in this case?

A Yes, Ma'am.

Q When he poked the gun at you, what happened next?

A He said that he only needed my money, Ma'am.

Q And then, what was your reply when he uttered those words?

A I was not able to immediately reply, Ma'am.

Q What happened next?

A When he was about or attempting to get the money from my belt bag, that was the time when I was able to hold to the gun, Ma'am.

Q Meaning to say that, he was the one who was getting your belt bag, you did not voluntarily give it to him?

A Yes, Ma'am.

Q And then you were able to grab the gun?

A Yes, Ma'am.

x x x x

[Prosecutor Ferdinand H. Palafox (cross-examination)]

Q So, Mr. Witness, it is now your testimony indeed on January 9, 2009, you met the victim in this case Gilbert Grimaldo y Nera?

A If he is the victim, then he is the one that I was able to meet