

## FIRST DIVISION

[ G.R. No. 206381, March 25, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANIEL MATIBAG Y DE VILLA @ "DANI" OR "DANILO," ACCUSED-APPELLANT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Before the Court is an ordinary appeal<sup>[1]</sup> filed by accused-appellant Daniel Matibag y De Villa @ "Dani" or "Danilo" (Matibag) assailing the Decision<sup>[2]</sup> dated September 13, 2012 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03759 which affirmed *in toto* the Decision<sup>[3]</sup> dated August 1, 2008 of the Regional Trial Court of Pallocan West, Batangas City, Branch 3 (RTC) in Criminal Case No. 13941, finding Matibag guilty beyond reasonable doubt of the crime of Murder.

#### The Facts

In an Amended Information<sup>[4]</sup> dated May 5, 2005, Matibag was charged with the crime of Murder defined and penalized under Article 248 of the Revised Penal Code (RPC), as amended,<sup>[5]</sup> the accusatory portion of which reads:

That on or about March 27, 2005 at around 8:40 o'clock [sic] in the evening at Iron Street, Twin Villa Subdivision, Brgy. Kumintang Ibaba, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a Beretta Caliber .9MM Pistol with Serial No. 3191M9, a deadly weapon, with intent to kill and with the qualifying circumstance of treachery, did then and there willfully, unlawfully and feloniously attack, assault and shoot with said pistol one Enrico Clar de Jesus Duhan, while the latter was completely defenseless, thereby hitting him and causing gunshot wounds at his head and chest, which directly resulted to the victim's death.

That the special aggravating circumstance of the use of unlicensed firearm is attendant in the commission of the offense.

CONTRARY TO LAW.<sup>[6]</sup>

Matibag entered a plea of not guilty during his arraignment. After the termination of the pre-trial, trial on the merits ensued.<sup>[7]</sup>

The prosecution asserted that at around 8:40 in the evening of March 27, 2005,

Enrico Clar de Jesus Duhan (Duhan), who just came from a meeting with the other officers of the homeowners' association of Twin Villa Subdivision, was walking along Iron Street in Brgy. Kumintang Ibaba, Batangas City when Matibag confronted Duhan, and asked, "*ano bang pinagsasabi mo?*" Duhan replied "*wala,*" and without warning, Matibag delivered a fist blow hitting Duhan on the left cheek and causing him to teeter backwards. Matibag then pulled out his gun and shot Duhan, who fell face-first on the pavement. While Duhan remained in that position, Matibag shot him several more times. PO2 Tom Falejo, a member of the Philippine National Police, positively identified Matibag and stated on record that he arrested the latter on the night of March 27, 2005. Dr. Antonio S. Vertido who conducted an autopsy on Duhan confirmed that the latter suffered gunshot wounds in the head and chest which led to his death. [8]

In his defense, Matibag alleged that on said date, he was at the *despedida* party of his neighbor when Duhan arrived together with the other officers of the homeowners' association. Wanting to settle a previous misunderstanding, Matibag approached Duhan and extended his hand as a gesture of reconciliation. However, Duhan pushed it away and said, "*putang ina mo, ang yabang mo,*" thereby provoking Matibag to punch him in the face. Matibag saw Duhan pull something from his waist and fearing that it was a gun and Duhan was about to retaliate, Matibag immediately drew his own gun, shot Duhan, and hurriedly left the place. Matibag went to see his police friend, Sgt. Narciso Amante, to turn himself in, but the latter was unavailable at the time. As Matibag headed back home, he was stopped by police officers who asked if he was involved in the shooting incident. He then readily admitted his involvement. [9]

### **The RTC Ruling**

In a Decision [10] dated August 1, 2008, the RTC convicted Matibag as charged, sentencing him to suffer the penalty of *reclusion perpetua*, and ordering him to pay the heirs of Duhan the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P59,000.00 as actual damages, and P25,000.00 as exemplary damages. [11]

The RTC refused to give credence to Matibag's claim of self-defense as he failed to prove the presence of unlawful aggression on Duhan's part, finding that: (a) Duhan's words and actions prior to Matibag's attack could not be considered as a real threat against him; (b) no firearm was recovered from the victim; (c) Matibag's account that Duhan was about to pull something from his waist, which thus led him to believe that he was about to be shot, remained uncorroborated; and (d) the number of gunshot wounds Duhan sustained contradicts the plea of self-defense. [12]

Separately, the RTC appreciated the existence of the qualifying circumstance of treachery since the attack was sudden, unprovoked, and without any warning on the victim who was unarmed and in a defenseless position. [13] Likewise, the special aggravating circumstance of use of unlicensed firearm was appreciated since a firearm was used in the commission of a crime and, hence, considered unlicensed. [14]

Dissatisfied, Matibag appealed<sup>[15]</sup> to the CA.

### **The CA Ruling**

In a Decision<sup>[16]</sup> dated September 13, 2012, the CA affirmed Matibag's conviction *in toto*.<sup>[17]</sup>

The CA agreed with the RTC's findings that: (a) treachery attended the killing of Duhan as the attack on him was sudden;<sup>[18]</sup> and (b) an unlicensed firearm was used in committing the crime, which is considered as a special aggravating circumstance.<sup>[19]</sup>

Hence, the instant appeal.

### **The Issue Before the Court**

The sole issue for the Court's resolution is whether or not the CA correctly upheld the conviction of Matibag for Murder.

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

The appeal is bereft of merit.

In the review of a case, the Court is guided by the long-standing principle that factual findings of the trial court, especially when affirmed by the CA, deserve great weight and respect. These factual findings should not be disturbed on appeal, unless there are facts of weight and substance that were overlooked or misinterpreted and that would materially affect the disposition of the case. The Court has carefully scrutinized the records and finds no reason to deviate from the RTC and CA's factual findings. There is no indication that the trial court, whose findings the CA affirmed, overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. Hence, the Court defers to the trial court on this score, considering too that it was in the best position to assess and determine the credibility of the witnesses presented by both parties.<sup>[20]</sup>

On this score, the Court now proceeds to resolve this case on points of law.

Matibag is charged with the crime of Murder, which is defined and penalized under Article 248 of the RPC, as amended. In order to warrant a conviction, the prosecution must establish by proof beyond reasonable doubt that: (a) a person was killed; (b) the accused killed him or her; (c) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (d) the killing is not Parricide or Infanticide.<sup>[21]</sup>

Under Article 14 of the RPC, there is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make. In *People v. Tan*,<sup>[22]</sup> the Court explained that the essence of treachery is the sudden and unexpected attack, without the slightest provocation on the part of the person

attacked.<sup>[23]</sup> In *People v. Perez*,<sup>[24]</sup> it was explained that a frontal attack does not necessarily rule out treachery. The qualifying circumstance may still be appreciated if the attack was so sudden and so unexpected that the deceased had no time to prepare for his or her defense.<sup>[25]</sup>

In this case, the prosecution was able to prove that Matibag, who was armed with a gun, confronted Duhan, and without any provocation, punched and shot him on the chest.<sup>[26]</sup> Although the attack was frontal, the sudden and unexpected manner by which it was made rendered it impossible for Duhan to defend himself, adding too that he was unarmed.<sup>[27]</sup> Matibag also failed to prove that a heated exchange of words preceded the incident so as to forewarn Duhan against any impending attack from his assailant.<sup>[28]</sup> The deliberateness of Matibag's act is further evinced from his disposition preceding the moment of execution. As the RTC aptly pointed out, Matibag was ready and destined to effect such dastardly act, considering that he had an axe to grind when he confronted Duhan, coupled with the fact that he did so, armed with a loaded handgun.<sup>[29]</sup> Based on these findings, the Court concludes that treachery was correctly appreciated.

This finding of treachery further correlates to Matibag's plea of self-defense. Note that by invoking self-defense, Matibag, in effect, admitted to the commission of the act for which he was charged, albeit under circumstances that, if proven, would have exculpated him. With this admission, the burden of proof shifted to Matibag to show that the killing of Duhan was attended by the following circumstances: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel such aggression; and (c) lack of sufficient provocation on the part of the person resorting to self-defense.<sup>[30]</sup>

Among the foregoing elements, the most important is unlawful aggression. It is well-settled that there can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense.<sup>[31]</sup> Jurisprudence states that not every form or degree of aggression justifies a claim of self-defense.<sup>[32]</sup> For unlawful aggression to be appreciated, there must be an actual, sudden, and unexpected attack or imminent danger thereof, not merely a threatening or intimidating attitude,<sup>[33]</sup> as against the one claiming self-defense.

Evidently, the treacherous manner by which Matibag assaulted Duhan negates unlawful aggression in the sense above-discussed. As mentioned, the prosecution was able to prove that the attack was so sudden and unexpected, and the victim was completely defenseless. On the other hand, Matibag's version that he saw Duhan pull something from his waist (which thereby impelled his reaction), remained uncorroborated. In fact, no firearm was recovered from the victim.<sup>[34]</sup> Hence, by these accounts, Matibag's allegation of unlawful aggression and, consequently, his plea of self-defense cannot be sustained. The foregoing considered, the Court upholds Matibag's conviction for the crime of Murder, qualified by treachery, as charged.

Moreover, as the RTC and CA held, the special aggravating circumstance of use of unlicensed firearm, which was duly alleged in the Information, should be