

## FIRST DIVISION

[ G.R. No. 181753, October 09, 2013 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMON PLACER, ACCUSED-APPELLANT.**

### D E C I S I O N

**BERSAMIN, J.:**

In the absence of proof beyond reasonable doubt that treachery attended the killing of the victim, the crime is homicide, not murder.

Ramon Placer hereby appeals the affirmance of his conviction for murder promulgated by the Court of Appeals (CA) on August 31, 2007.<sup>[1]</sup>

#### **Antecedents**

On August 3, 2001, the Office of the Provincial Prosecutor of Sorsogon charged Ramon and his brother Virgilio Placer with murder in the Regional Trial Court (RTC) in Sorsogon City, alleging thuswise:

That on or about June 24, 2001, at more or less 7:00 o'clock in the evening at barangay Somagongsong, Municipality of Bulan, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a bladed weapon, conspiring, confederating and mutually helping one another, with intent to kill, with treachery, evident premeditation and abuse of superior strength, did then and there willfully, unlawfully, and feloniously attack, assault and stab one Rosalino Gernale, thereby inflicting mortal/fatal wounds which caused his instantaneous death to the damage and prejudice of his legal heirs.

CONTRARY TO LAW.<sup>[2]</sup>

After the two accused pleaded not guilty to the foregoing information,<sup>[3]</sup> trial ensued.

The State presented seven witnesses, namely: Maria Gernale, Dr. Estrella Payoyo, Dr. Joseph Chavez, Gina Listana, Angelina Gestiada, SPO3 June Dominguez, and SPO2 Eulogio Santos. In the Brief for the People, the Office of the Solicitor General (OSG) summed up the State's evidence,<sup>[4]</sup> viz:

x x x x

On June 24, 2001, around 7 P.M., Maria Gernale and her husband, Rosalino Gernale, were on their way home to Brgy. Inararan, Bulan, Sorsogon on board a tricycle. They were in the company of Maria's father, another female passenger and five (5) young children. While their tricycle was moving, another tricycle carrying appellants Ramon and Virgilio Placer almost hit them. Appellants and Rosalino alighted [from] their respective tricycles and a heated altercation ensued between them. When things had subsided, Gernale and appellants proceeded their separate ways. (TSN, March 24, 2002, p. 9)

Sometime later, Maria realized that appellants were chasing them. The latter were able to overtake the tricycle driven by Rosalino and later blocked its path. Appellants alighted [from] their tricycle and proceeded towards the direction of Rosalino who had also alighted from his tricycle. A confrontation followed and Angelina Gestiada, Rosalino's sister, tried to pacify appellants. But appellant Ramon Placer did not heed as he stabbed Rosalino in the chest. (Id) Maria who was only about two (2) steps away saw the incident. (TSN, January 7, 2002, p. 10) Rosalino fell towards the direction of his tricycle and just as he was about to fall, this time Virgilio stabbed him in the stomach. (Id)

Thereafter, appellants immediately fled the area on board their tricycle. It was Virgilio who drove the tricycle. Maria frantically shouted for help and Angelina ran towards the house of their nearest relative to ask for assistance. Rosalino was brought to the Bulan Municipal Hospital where he was pronounced dead. (TSN, May 7, 2002, p.7)

Dr. Estrella A. Payoyo, of the Rural Health Unit, Bulan Municipal Hospital, testified that the immediate cause of Rosalino's death was internal hemorrhage secondary to multiple stab wounds. (TSN, January 7, 2002, p. 16) Dr. Joseph Chavez, the Medical Officer of Bulan Municipal Hospital who prepared the necropsy report testified that the multiple stab wounds inflicted upon Rosalino were fatal and that some vital organs were injured. The possible assault weapon according to Dr. Chavez was a sharp pointed object, more or less 0.5 cm. in width with a gape of 0.5 cm. (TSN, February 11, 2002, pp. 5-7)

Rosalino's sister, Angelina Gestiada, reported the incident to the police authorities. (Police Blotter, Entry No. 1308, p. 281, June 24, 2001) Angelina accompanied SPO3 June Dominguez and a Barangay Kagawad of Somagongsong to the residence of appellant Virgilio Placer but the latter's wife informed them that Virgilio was out. When they reached the residence of appellant Ramon Placer, they were informed that the latter had also gone out. SPO2 Eulogio Santos and PO1 Giado discovered the tricycle used by appellants parked some fifty (50) meters away from the house of the father of appellants. (TSN, July 9, 2002, p. 11)

On June 25, 2001, Ramon Placer voluntarily surrendered himself to Brgy. Capt. Rey Loilo of Beguin, Bulan, Sorsogon who then accompanied him to the local police authorities.

X X X X

On the other hand, the version of the Defense was rendered by Ramon and three other witnesses, namely: Aproniana Manchos, Rey Loilo and SPO2 Eugenio Magno. Virgilio opted not to testify in court. The CA summarized this version in its decision, [5] thusly:

X X X X

Ramon tried to show that he was informed by Randy Gordola that Virgilio was having an altercation with someone, who turned out to be Rosalino. Ramon rode his bicycle and proceeded to the place mentioned. Ramon saw Rosalino chasing Virgilio with a bolo, but the latter was able to go inside a fence, and Rosalino being pulled by his wife. Rosalino went to his tricycle and drove away. After a while, Rosalino stopped, alighted from his tricycle and returned to the place where he chased Virgilio. Ramon told Rosalino to go home in order to avoid trouble. Rosalino asked Ramon who he was, uttered invectives and attacked the latter. Ramon was surprised and boxed Rosalino on the mouth, causing the latter to fall on the ground. Rosalino stood up and attempted to stab Ramon with a Batangas knife, but the latter was able to grab the Batangas knife and he stabbed Rosalino. Ramon, who could not remember how many times he stabbed Rosalino, then ran towards his house. The following day, Ramon went to the house of Barangay Captain Rey Loilo and requested the latter to accompany him to the police authorities in order to surrender himself and the knife which he used in stabbing somebody.

Appropriana Manchos, an aunt of Ramon and Virgilio, testified that she was inside her house when she heard a commotion. She ran to the place of the commotion, which was about 80-100 meters away from her house, and she saw Ramon being attacked by someone. Ramon retaliated by boxing said person on the mouth, causing the latter to fall down. Said person then stood up holding a bladed weapon and tried to stab Ramon. Ramon was able to get hold of the knife and stabbed said person. Appropriana stated that she did not see Virgilio at the place of the incident.

X X X X

After trial, the RTC convicted Ramon and Virgilio of murder upon finding the States's version more credible than that of the Defense, [6] decreeing:

WHEREFORE, premises considered, accused RAMON PLACER and VIRGILIO PLACER having been found GUILTY beyond reasonable doubt of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code, as amended by RA 7659, are hereby sentenced as follows:

a) RAMON PLACER being the principal by direct participation involved in the actual killing of ROSALINO GERNALE (deceased), to him is imposed the indivisible penalty of RECLUSION PERPETUA regardless of the presence of mitigating circumstance of VOLUNTARY SURRENDER (Art. 63, Revised Penal Code), with all the accessory penalties;

b) VIRGILIO PLACER having been found to be liable as an ACCOMPLICE, to him is imposed the lesser indeterminate penalty of 8 years and 1 day of prision mayor, as minimum, to 14 years, 10 months and 20 days of reclusion temporal, as maximum, absent any mitigating or aggravating circumstance (par. (1), Art. 64, Revised Penal Code, as amended)

c) To indemnify the heirs of the late Rosalino Gernale jointly and solidarily in the amount of P25,000.00 as actual damages; P50,000.00 as civil indemnity for his death; and another P50,000.00 as moral damages; and to pay the costs.

The period of preventive imprisonment already served by accused Virgil[i]o and Ramon both surnamed Placer, shall be credited in the service of their sentences pursuant to Article 29 of the R.P.C., as amended.

SO ORDERED.

Ramon and Virgilio appealed via notice of appeal directly to the Court,<sup>[7]</sup> but the Court remanded the appeal to the CA on February 20, 2006.<sup>[8]</sup> Virgilio subsequently filed an *Urgent Motion to Withdraw Appeal* in the CA,<sup>[9]</sup> averring that he had already served more than six years in detention for this case and had thus qualified to apply for parole or executive clemency; that he had already applied for parole or executive clemency; and that he would need a certification of non-appeal to support his application for parole or executive clemency.<sup>[10]</sup> Upon verification from Atty. Elmer M. Rejano, then the Acting Chief Legal Officer of the Bureau of Corrections, that Virgilio had voluntarily executed his motion and had fully understood its consequences,<sup>[11]</sup> the CA granted the *Urgent Motion to Withdraw Appeal* and considered the appeal closed and terminated as to him.<sup>[12]</sup>

As earlier mentioned, the CA affirmed Ramon's conviction on August 31, 2007.<sup>[13]</sup> Hence, his present appeal.

### **Issues**

Ramon still contends that he incurred no criminal liability because he had acted in self-defense in stabbing Rosalino; that, assuming that he was criminally liable for the killing of the victim, the crime committed was homicide, not murder; and that his voluntary surrender was a mitigating circumstance that entitled him to a lower penalty.<sup>[14]</sup>

### **Ruling**

The appeal is partly meritorious.

## I.

### **Ramon's plea of self-defense was not established**

By pleading self-defense, Ramon admitted the authorship of the killing of Rosalino Gernale. The consequence of the plea of self-defense was to shift to Ramon's shoulders the burden of evidence, that he must then prove clearly and convincingly the following elements of self-defense, to wit: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the attack; and (3) lack of sufficient provocation on the part of the person defending himself.<sup>[15]</sup> Although the elements must concur, self-defense must rest firstly on proof of the unlawful aggression on the part of the victim.

There can be no self-defense, whether complete or incomplete, if no unlawful aggression from the victim is established.<sup>[16]</sup> In self-defense, unlawful aggression is a primordial element, a condition sine qua non. If no unlawful aggression attributable to the victim is established, self-defense is not a defense, because there would then be nothing to repel on the part of the accused.<sup>[17]</sup>

In *People v. Nugas*,<sup>[18]</sup> the Court has properly delineated the character of unlawful aggression as an indispensable element of self-defense in the following manner:

x x x. 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. Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful.

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.

The fatal confrontation between Rosalino emanated from the near collision between Rosalino's tricycle and the tricycle driven by Virgilio which then also carried Ramon. The near collision immediately led to a heated exchange of words between Rosalino