

## THIRD DIVISION

[ G.R. No. 190861, December 07, 2011 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LINO L. DUAVIS,  
APPELLANT.**

### D E C I S I O N

**PERALTA, J.:**

For resolution of this Court is the appeal of appellant Lino Duavis, assailing the Decision<sup>[1]</sup> dated May 29, 2009 of the Court of Appeals (CA), affirming with modification, the Decision<sup>[2]</sup> dated April 23, 2004 of the Regional Trial Court (RTC), Branch 13, Carigara, Leyte, finding him guilty beyond reasonable doubt of the crime of homicide.

The following are the antecedent facts as shown in the records.

Around 5:30 in the afternoon of May 2, 2003, Dante Largado, Sr. was walking towards the direction of his house at Barangay Balire, Tunga, Leyte. Appellant was running behind Largado, Sr. carrying a long bolo about twenty-four (24) inches in length. Thereafter, appellant hacked Largado, Sr., hitting him on the face, leaving a wound so severe that he immediately fell to the ground and caused his instantaneous death.

Dante Largado, Jr., who was only a few meters from the place of the incident, shouted to appellant "*Why did you do that to my father?*" Appellant replied, "*You have no business on this, son of a bitch.*" Dante Largado, Jr. then shouted for help, but nobody responded. Alex Davocol, a neighbor of Largado, Sr., saw the incident and called the police station.

Thereafter, an Information<sup>[3]</sup> was filed against appellant for the crime of murder. The charge reads as follows:

That on or about the 2<sup>nd</sup> day of May, 2003, in the Municipality of Tunga, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and hack one DANTE LARGADO, Sr. with the use of long bolo (sundang), which the accused had provided himself for the purpose, thereby inflicting upon the latter the following wounds, to wit:

Incised wound 13.0 cm. in length x 3 cm. in width x 3.8 cm.  
in depth at the (L) side of the [face] extending from the angle

of the mouth to the (L) ear involving the ear, skin, subcutaneous tissues, parotid gland, nerves, blood vessels and with fracture of the facial bones.

which wounds caused the death of said Dante Largado, Sr.

CONTRARY TO LAW.<sup>[4]</sup>

Upon arraignment, on August 4, 2003, appellant, with the assistance of his lawyer, pleaded not guilty. Thereafter, the trial on the merits ensued.

The prosecution, to prove the earlier mentioned facts, presented the testimonies of Dante Largado, Jr., Alex Davocol and Dr. Catalina Vivero Ronda. The defense, on the other hand, presented the testimony of appellant which can be summarized as follows:

Around 3 o'clock in the afternoon of May 2, 2003, appellant was in his yard, performing his work as a barber, together with Ompong Ronquillo, Aton Daong and Romeo Drillos. After an hour, appellant was able to finish his work and decided to have a drink with his friends.

Dante Largado, Sr. soon arrived and drank *tuba* with them. A few moments later, Daong and Drillos left. Largado, Sr. then got angry at appellant, because the latter told the former that they will have to stop drinking, and Largado, Sr. did not want to stop. Largado, Sr. then accused appellant of being too choosy of his drinking companions. Appellant explained to Largado, Sr. that it is not true. Appellant further told Largado, Sr. that they have to stop drinking because the former was going to gather more tuba. Largado, Sr. then broke a glass on the table and pushed it towards appellant who was thrown outside the yard. Appellant told Largado, Sr. that he would not fight him, but the latter answered back and told appellant, "*Putang ina, papatayin kita pag nahawakan kita.*"

Appellant then picked up a club and hurled the same at Largado, Sr. He also kicked Largado, Sr. on the chest, afterwhich, Largado, Sr. ran towards the extension of appellant's house, picked a bolo and hacked appellant with it. Appellant was able to evade the onslaught. They then wrestled for the possession of the bolo and the same got thrown away. Largado, Sr. was able to get hold of a club and he swung it at appellant, who evaded the blow. Thereafter, appellant ran towards his house, fetched his family and brought them to his father's house. Appellant returned to his house, got his scythe and *barok* and proceeded to gather tuba at the coconut plantation of Romeo Drillos. After gathering tuba, he went home and stayed at the extension of his house. Appellant was surprised when he saw Largado, Sr. hiding behind the trunk of a coconut tree preparing to attack him with a scythe. Appellant was able to evade him because of the noise created by Largado, Sr. when he stepped on a strew of coconut leaves lying on the ground. Appellant ran towards the direction of his house and Largado, Sr. followed him. Largado, Sr. was able to overtake him, and since he had no more place to escape, appellant hacked Largado, Sr. with his scythe, causing the latter's death.

Afterwards, appellant went back to the house of his father and informed the latter of

what happened and that he wanted to surrender. When he went out of his father's house, the policemen were already there and he was arrested.

However, the trial court found in favor of the prosecution. The dispositive portion of its decision states that:

WHEREFORE, premises considered, pursuant to Article 248 of the Revised Penal Code, as amended, and the amendatory provision of Sec. 11, R.A. No. 7659 (The Death Penalty Law), the Court found accused LINO DUAVIS y LABARDA, GUILTY, beyond reasonable doubt of the crime of MURDER, charged under the Information, and sentenced to suffer the maximum penalty of DEATH, and ordered to pay civil indemnity to the heirs of Dante Largado, Sr., the sum of Seventy- Five Thousand (P75,000.00) Pesos and moral damages in the amount of Fifty Thousand (P50,000.00) Pesos; and

Pay the Cost.

SO ORDERED.<sup>[5]</sup>

The case was appealed to this Court. However, on July 26, 2005,<sup>[6]</sup> in conformity with the Decision promulgated on July 7, 2004 in G.R. Nos. 147678-87 entitled *The People of the Philippines v. Efren Mateo y Garcia*, modifying the pertinent provisions of the Revised Rules of Criminal Procedure, more particularly Sections 3 and 10 of Rule 125 and any other rule insofar as they provide for direct appeals from the RTCs to this Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment, as well as the Court's *En Banc* Resolution dated September 19, 1995, in "Internal Rules of the Supreme Court" in cases similarly involving the death penalty, pursuant to the Court's power to promulgate rules of procedure in all courts under Section 5, Article VII of the Constitution, and allowing an intermediate review by the CA before such cases are elevated to this Court, this Court transferred the cases to the CA for appropriate action and disposition.

On May 29, 2009, the CA, finding that the trial court erred in appreciating the qualifying circumstance of evident premeditation, ruled that appellant is guilty of the crime of homicide instead of murder. The dispositive portion of the decision reads as follows:

WHEREFORE, in view of all the foregoing, the April 23, 2004 Decision of the Regional Trial Court, Branch 13, Carigara, Leyte, is hereby AFFIRMED WITH MODIFICATION. Accordingly, appellant Duavis is found guilty beyond reasonable doubt of the crime of Homicide and is hereby sentenced to suffer an indeterminate penalty of imprisonment anywhere within the range of six (6) years and one (1) day to twelve (12) years of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months of *reclusion temporal* medium, as maximum.

The award of Seventy-Five Thousand (P75,000.00) Pesos as civil

indemnity and Fifty Thousand (P50,000.00) Pesos as moral damages to the heirs of Dante Largado, Sr. is also affirmed.

SO ORDERED.<sup>[7]</sup>

This Court accepted the appeal of the appellant on February 17, 2010.<sup>[8]</sup>

Appellant filed a Manifestation and Motion<sup>[9]</sup> on April 20, 2010 stating that he will adopt his earlier Supplemental Brief.

The Office of the Solicitor General (OSG), on May 4, 2010, filed its Manifestation and Motion<sup>[10]</sup> stating that it will no longer file a Supplemental Brief and will merely adopt the Appellee's Brief<sup>[11]</sup> it previously filed.

In his Brief,<sup>[12]</sup> appellant assigned the following errors:

I.

THAT THE TRIAL COURT GRAVELY ERRED IN NOT GIVING EXCULPATORY WEIGHT TO THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.

II.

THAT THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III.

ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT DID NOT ACT IN LEGITIMATE SELF-DEFENSE IN HACKING THE VICTIM, THE TRIAL COURT GRAVELY ERRED IN CONVICTING HIM OF MURDER.<sup>[13]</sup>

Appellant insists that all the elements or requisites of self-defense are present in this case. According to him, there was unlawful aggression on the part of the victim when he hid behind the trunk of a coconut tree and then hacked the appellant which the latter was able to evade. He also opines that the means employed by him in repelling or preventing the victim's aggression was reasonable, considering that when he ran away, the victim still chased him and overtook him. Finally, he states that there was lack of sufficient provocation on his part, as it was the victim who provoked him when he tried to hack and chase the victim.

In short, appellant argues that the trial court and the CA erred in not appreciating the justifying circumstance of self-defense and, instead, relied on the testimonies of the witnesses for the prosecution. However, this Court finds the said argument without any merit.