

## THIRD DIVISION

[ G.R. NO. 148971, November 29, 2006 ]

**ALBERTO GARONG, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### DECISION

**VELASCO, JR., J.:**

Where two criminal cases arose from one incident, and the accused cries self-defense, it is incumbent upon the accused to prove all of its elements. Self-defense is a factual allegation which should be proved during trial. Since the findings of the trial court are regarded with finality, we cannot review such factual issue on appeal.

#### The Case

This is a Petition for Review on Certiorari<sup>[1]</sup> under Rule 45 assailing the August 9, 1996 Decision<sup>[2]</sup> of the Court of Appeals (CA) and the March 10, 2000 Resolution<sup>[3]</sup> which denied petitioner's Motion for Reconsideration in the case docketed as CA G.R. No. 14852, *People of the Philippines, Plaintiff-Appellee, v. Alberto Garong, Accused-Appellant*. The CA affirmed the March 3, 1993 Joint-Decision of the Regional Trial Court (RTC), Branch 39, Calapan, Oriental Mindoro in Criminal Case No. C-3406 convicting petitioner of frustrated homicide. We previously denied petitioner's Motion for Extension of time to file petition in our August 15, 2001 Resolution<sup>[4]</sup> for breach of the material dates rule. We further denied petitioner's Motions for Reconsideration in our October 3, 2001<sup>[5]</sup> and January 23, 2002<sup>[6]</sup> Resolutions. On June 19, 2002, however, we set aside said Resolutions because of the failure of petitioner's counsel to state the material dates in petitioner's Motion for Extension of time to file petition.<sup>[7]</sup> We likewise granted petitioner's request for a counsel *de officio* on June 18, 2003.<sup>[8]</sup>

#### The Facts

The case arose from the incident in the evening of February 19, 1991 in Barangay Tibag, Calapan, Oriental Mindoro which gave rise to two (2) criminal cases. One was filed on May 10, 1991 against private complainant Gerson Morta, which reads:

#### Criminal Case No. C-3402

That in the evening of February 19, 1991, or thereabout, in barangay Tibag, municipality of Calapan, province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, accused GERSON MORTA, alias "BOYET" with intent to kill and malice aforethought, did then and there, willfully, unlawfully and feloniously entered the residential house of Efren Fajardo by forcibly destroying a portion of the

fence located at the back thereof and once inside said premises, accused hurled a piece of wood at Efren Fajardo who was injured on his face and immediately thereafter, accused attacked, assaulted and stabbed Cesar Guevarra and Alberto Garong with a pair of knife thrusts on their bodies, thus commencing the commission of the crime of homicide, but did not perform all the acts of execution which should produce it by [reason] of some cause[s] other than his own spontaneous desistance and i.e., the victims were able to successfully parry away and evade the knife thrusts from their bodies and the sound of a gunshot that scared the accused; thus, accused executed by overt acts all the elements necessary for the commission of MULTIPLE ATTEMPTED HOMICIDE with the generic aggravating circumstance of unlawful entry being attendant in the commission thereof.

CONTRARY TO ARTICLE 249 IN RELATION TO ARTICLES 250 AND 48 OF THE REVISED PENAL CODE.<sup>[9]</sup>

The other case was filed on May 16, 1992 against petitioner together with Cesar Guevarra and Efren Fajardo for the crime of frustrated homicide, to wit:

**Criminal Case No. C-3406**

That in the evening of February 19, 1991, or thereabout, in barangay Tibag, municipality of Calapan, province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, accused ALBERTO GARONG y VILLANUEVA alias "Bert", CESAR GUEVARRA y GARCIA and EFREN FAJARDO y GUEVARRA, with intent to kill and conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully and feloniously use violence upon the person of one [G]ERSON MORTA with the use of hand knives and by firing a hand gun at said victim, thereby inflicting upon him a gunshot wound located at the left inferior buttocks producing severe hemorrhage, which would necessarily cause his death, thus performing all the acts of execution which should produce the crime of homicide as a consequence, but nevertheless did not produce it by reason of causes independent of their will, that is, by the timely and able medical management rendered on said victim which prevented his death; thus, all of the accused executed by overt acts all the elements necessary for the commission of the crime of FRUSTRATED MURDER.

CONTRARY TO ARTICLE 249 IN RELATION TO ARTICLES 250 AND 48 OF THE REVISED PENAL CODE. <sup>[10]</sup>

To remedy the apparent inconsistent position of the State to prosecute the two (2) criminal cases which arose from one incident and involved the same parties, the parties agreed that the prosecution's evidence in one criminal case would be adopted as defense evidence in the other case and vice-versa.<sup>[11]</sup> On March 3, 1993, the Oriental Mindoro RTC, Branch 39 made a finding of facts which were adopted by the CA as follows:

On February 19, 1991, in the evening, while Gerson Morta was on his way home from work, and while passing the narrow alley (iskinita) in

front of the house of Efren Fajardo the former pulled the nipa roofing of the house of the latter who was then inside. This act was seen by Cesar Guevarra who took offense and berated and scolded Gerson Morta, saying "Putang ina mo Boyet, nagbabarako ka yata" and to which Gerson Morta replied "Ano ngayon sa iyo kung haklitin ko yon".

As both Gerson Morta and Cesar Guevarra were tipsy, one word led to another until they were poised to come to grips had it not been for the timely intervention of one Efren Gentaroy who separated them. Before leaving the place after the intervention of Efren Gentaroy, Cesar Guevarra threw things at Gerson Morta, one of which, a casserole, hitting Gerson Morta at the back of his head. Because of this, Morta left with this parting threat, "Babalikan kita."

A few minutes thereafter, Gerson Morta returned crashing thru the wooden fence at the back of the house of Efren Fajardo and once inside the compound, hurled the piece of wood he was carrying which landed on the face of Efren Fajardo and thereafter proceeded to attack Cesar Guevarra with his "gulukan" who, however, was not hit by the stab blows delivered by said Morta because Alberto Garong was able to pull Guevarra away, and because of this, Morta turned his attention to Alberto Garong and proceeded to attack him (Garong) with the same gulukan, but Garong was able to evade the stabbing blows delivered by Morta.

It was while Morta was attacking Garong who was retreating and the trying [sic] to avoid the thrusts of the former when a single shot was fired. Morta stopped, turned around and scampered away towards the direction of his house passing through the same fence which he earlier destroyed.

On the other hand, the version of Gerson Morta may be stated as follows:

While coming from work that night in question, [Morta] accidentally slipped on a canal causing him to lean rather heavily on the nipa wall of the house of Efren Fajardo which called the attention of Cesar Guevarra who then scolded him and even hurled things against him. One of the things thrown which landed on [sic] his (Morta's) head at the back was a casserole. Morta proceeded on his way to his house because, according to him, they were drunk.

Upon reaching his house Morta asked his wife to prepare his clothes as he was going to attend the Bible study in a place along the provincial road. To wash himself he opened the faucet located on the ground floor of the house of his mother who was his neighbor and finding that there was no water in the faucet or tap, he borrowed a pail from a neighbor, disrobed, got a towel and proceeded to the well to clean or wash himself.

When he was on his way to a well and only about one meter away from the house of Cesar Guevarra and Efren Fajardo he saw the two with Garong blocking the road (nakaharang sa kalye) and sensing trouble, he turned around and intended to return to his house and while his back

was turned he was shot from behind by Alberto Garong and company rushing towards him and so he forced himself to get up and walked towards the direction of his house and Garong and company pursued him but his (Morta's) wife interceded.

Shortly after the incident Police Officer Cristobal Ramos repaired to the crime scene and saw drops of blood on the alley leading to the house of [Gerson] Morta.

PO1 Ricardo Vivas together with PO3 Asilo investigated the incident in question. When PO1 Ricardo Vivas investigated Gerson Morta at the Oriental Mindoro Provincial Hospital, Gerson Morta told him that Alberto Garong shot him. When said policeman went to the scene of incident he talked with Cesar Guevarra [and] Efren Fajardo but the two did not tell anything about the assault made by Gerson Morta against them and Alberto Garong.

For the gunshot wound sustained, Gerson Morta was confined and treated in the Oriental Mindoro Provincial Hospital for around ten days and for which he incurred expenses in the amount of P10,000.00. Had it not been for the timely and able medical assistance rendered, Gerson Morta would have died.

He was likewise prevented from performing his customary labor as carpenter, thereby depriving him of his daily income of P120.00 a day.<sup>[12]</sup>

The trial court rendered the March 3, 1993 Joint Decision:

ACCORDINGLY, in Criminal Case No. C-3402, accused Gerson Morta is acquitted of the crime charged with costs de officio, for failure of the prosecution to prove his guilt beyond reasonable doubt and the bail posted for his provisional liberty is hereby cancelled.

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In Criminal Case No. C-3406, the Court finds accused Alberto Garong guilty beyond reasonable doubt, as principal, of the crime of Frustrated Homicide penalized under Article 249 in relation to Articles 6 and 50 of the Revised Penal Code by prision mayor.

Considering the peculiar facts of the case and applying Article 250 of the Revised Penal Code the penalty lower by one degree than that provided by law may be imposed.

Applying the Indeterminate Sentence Law accused Alberto Garong is hereby sentenced to suffer imprisonment of FOUR MONTHS of arresto mayor, as minimum, to FOUR YEARS and TWO MONTHS of prision correccional, as maximum, together with accessory penalties provided by law and to pay the costs.

Accused Alberto Garong is likewise ordered to indemnify the victim Gerson Morta in the amount of P15,000.00 by way of actual and