

## SECOND DIVISION

[ G.R. No. 144699, March 10, 2004 ]

**ROGELIO GARCIA Y DE ROXAS, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**CALLEJO, SR., J.:**

This is a petition for review on certiorari of the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR No. 17060 affirming the Decision<sup>[2]</sup> of the Regional Trial Court of Batangas, Branch 5, in Criminal Case No. 116-88, convicting the petitioner of homicide and sentencing him to an indeterminate penalty of imprisonment, and of the resolution of the CA denying his motion for reconsideration of its decision.

#### The Indictment

The petitioner was charged with homicide in an Information, the accusatory portion of which reads:

That on or about the 8th day of December, 1987, at about 9:35 o'clock in the evening, at Ilustre Avenue, Municipality of Lemery, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with an ice pick, with intent to kill and without any justifiable cause, did then and there wilfully, unlawfully and feloniously attack, assault and stab with the said weapon one Pancrasio de Villa, thereby inflicting upon the latter the following injuries. ...<sup>[3]</sup>

Upon his arraignment, the petitioner, assisted by counsel, declared a plea of not guilty.

#### The Case for the People

Between 9:00 p.m. and 9:30 p.m. of December 2, 1987, the passenger jeep owned by Pancrasio de Villa was parked at the Petron Gasoline Station at Ilustre Avenue, near the boundary of Taal and Lemery, Batangas. Inside were Fortunato de Sagun, Pancrasio de Villa, Jose de Castro, Jr. and Arthur de Castro. Each had a bottle of beer while waiting for the fluvial procession of the Virgin Mary. De Sagun fell asleep inside the jeep.

Momentarily, petitioner Rogelio "Regie" Garcia and two companions arrived. An altercation ensued between the petitioner and De Villa which led to the petitioner boxing De Villa. The companions of the petitioner tried to intervene but Jose de Castro stopped them. The petitioner forthwith pulled out an ice pick and stabbed De Villa. The latter fled, with the petitioner in hot pursuit. De Castro woke up De Sagun and told the latter to follow De Villa who was being chased by the petitioner.

De Sagun forthwith ran after the petitioner and De Villa. De Sagun was already about nine arms' length away from the petitioner and was in front of the jeepney terminal near the Luzon Development Bank when De Villa tripped and fell to the ground. Upon overtaking De Villa, the petitioner stabbed him anew with the ice pick. De Sagun pleaded to the petitioner, "Regie, Regie, *huwag! Huwag!*" By then, it was too late. The petitioner fled from the scene.

De Sagun brought De Villa to St. Martin Hospital where the latter died. The next day, police investigators, led by Pat. Honorio Caringal, arrived at the scene of the stabbing and conducted an on-the-spot investigation. Caringal was informed that there was an ice pick on the rooftop of Atty. Malabanan's bolo store. Caringal found the ice pick and took custody of it. Dr. Hermenegildo Declaro, the Municipal Health Physician of Lemery, Batangas, performed an autopsy on the cadaver of De Villa and submitted a report containing his post-mortem findings and the cause of the victim's death:

1. Stab wound located at the right side of the chest, mid axillary line at the level of the 3rd intercostal space. Wound round measuring one (1) mm. in diameter with the depth of 4 inches. Direction of the wound going medially.
2. Stab wound at the left side of the chest at the anterior axillary line, at the level of the 6th intercostal space. Wound round measuring one (1) mm. in diameter with the depth of five (5) inches. Direction of the wound going medially upward.
3. Stab wound at the left side of the chest mid-axillary line level at the 3rd intercostal space. Wound round, measuring one (1) mm. in diameter with the depth of four (4) inches. Direction of the wound going medially.
4. Stab wound at the right arm, dorsal side, located at the mid-portion one (1) mm. in diameter, going through and through.
5. Stab wound at the lateral side of the left forearm, level of the elbow joint. Wound round, with the diameter of one mm. going through and through.
6. Cut wound at the anterior side of the neck measuring three (3) inches long, direction of the wound horizontally with the depth of one half (1/2) mm. through the entire length.
7. Cut wound at the left cheek one (1) inch long with a depth of one half (1/2) mm. throughout the entire length.
8. Two (2) stab wounds side by side one (1) inch away from each other located at the left leg anterior part, midway with the depth of one (1) mm.

Cause of death:

Hemorrhagic shock due to multiple stab wounds.<sup>[4]</sup>

The doctor also signed the victim's certificate of death.<sup>[5]</sup>

Meanwhile, De Sagun and Jose de Castro gave their respective statements to Pat. Honorio Caringal narrating how the petitioner killed the victim.<sup>[6]</sup>

### The Case for the Petitioner

The petitioner admitted killing the victim but assailed that he did so in self-defense. He testified that between 7:00 p.m. and 9:00 p.m. of December 8, 1987, he was with his family and a nephew in the passenger jeep owned by his sister. They were parked at the Petron Gasoline Station near the boundary of Taal and Lemery, Batangas. He was talking with Lino Mayuga and Gregorio Almensor. Momentarily, Pancrasio de Villa and Jose de Castro arrived. De Villa accused the petitioner of being boastful and boxed the latter's right ear. Blood oozed from his ear. Instinctively, he averted his fall and stood up. De Castro held him by the hands. The petitioner saw that De Villa was pulling out an ice pick from his waistline with his left hand. He managed to free himself from De Castro's hold and was able to wrest the ice pick from De Villa. The latter then fled, but De Castro woke up his companions. He chased De Villa who was then running towards the bolo store owned by Atty. Malabanan, about one-and-a-half blocks away from the station. He was afraid that De Villa might get hold of one of the bolos in the store and stab him with it. Thus, when De Villa tripped and fell to the ground, he hit the latter several times with the ice pick. The petitioner could not recall how many times he stabbed the victim.

After the incident, the petitioner went back to the Petron Gasoline Station. There, he saw SPO1 Eulalio Alilio of the Lemery Police Station on his motorcycle, conducting an investigation in connection with another crime. He approached SPO1 Alilio and told him, "*Nakasaksak ako ng tao.*" SPO1 Alilio brought him to the Lemery Police Station. He was then turned over to Desk Officer Amado Villavicente who placed the matter in the police blotter.

The petitioner testified that he sustained contusions and hematoma in the hands of De Villa, and was examined by Dr. Hermenegildo Declaro on December 10, 1997.

### The Verdict of the Trial Court

After trial, the court rendered judgment convicting the petitioner of homicide. The decretal portion of the decision reads:

WHEREFORE, this Court finds accused Rogelio Garcia y de Roxas alias "Regie" guilty beyond reasonable doubt of having committed the crime of homicide under Article 249 of the Revised Penal Code with the mitigating circumstance of voluntary surrender appreciated in favor of the accused, and hereby imposes on said accused the penalty of imprisonment ranging from EIGHT (8) YEARS and ONE (1) DAY of *prision mayor*, to FOURTEEN (14) YEARS and EIGHT (8) MONTHS of *Reclusion Temporal*, minimum; and to pay the heirs of Pancrasio de Villa the sum of P50,000.00 as civil indemnity, and the further sum of P20,000.00 as moral damages.

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

The court appreciated, in his favor, the mitigating circumstance of voluntary surrender.

The petitioner appealed to the CA which affirmed the appealed decision *in toto*. The CA rejected the petitioner's plea for acquittal on his claim of self-defense.

The petitioner now contends that the RTC and the CA committed reversible errors, *viz.*:

I

... IN AFFIRMING THE CONVICTION OF THE PETITIONER DESPITE THE FACT THAT HE ACTED IN SELF-DEFENSE.

II

... IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCE OF INCOMPLETE SELF-DEFENSE IN FAVOR OF THE PETITIONER, ASSUMING THAT COMPLETE SELF-DEFENSE COULD NOT BE APPRECIATED IN HIS FAVOR.

III

... IN IMPOSING THE WRONG PENALTY.<sup>[8]</sup>

On the first assignment of error, the petitioner asserts that the trial court and the CA erred in giving credence and full probative weight to the testimonies of De Sagun and De Castro. He avers that De Sagun was asleep when the petitioner stabbed the victim with an ice pick and did not see how the incident started. It was incredible that De Castro did not prevent the petitioner from stabbing De Villa, and woke up De Sagun only after the petitioner had already slain the victim. The petitioner insists that De Villa was the unlawful aggressor, as the latter insulted and boxed him on his right ear and later pulled out an ice pick. The petitioner had to defend himself when De Villa fled to Atty. Malabanan's bolo store, as the latter could get hold of one of the bolos there and kill him with it. The petitioner concludes that his use of an ice pick to stab and disable De Villa was reasonable.

The petitioner's submission has no merit.

The question as to who between the petitioner and De Villa was the unlawful aggressor is a question of fact addressed to the trial court for determination based on the evidence on record.<sup>[9]</sup> The trial court had already ruled that the petitioner was the unlawful aggressor. The well-entrenched rule is that the findings of facts of the trial court, its assessment of the credibility and probative weight of the testimonies of the witnesses and its conclusions based on the said findings are accorded by the appellate court high respect, if not conclusive effect, unless the trial court ignored, misconstrued and misinterpreted cogent facts and circumstances of substance which, if considered, would alter the outcome of the case.<sup>[10]</sup> The Court has reviewed the records of the RTC and the CA and finds no justification to deviate from the finding that the petitioner failed to prove that he acted in complete or incomplete self-defense and, as such, is criminally liable for the victim's death.

The plea of self-defense of an accused is both a confession and avoidance. He thereby admits having killed or deliberately inflicted injuries on the victim, but asserts that he has not committed any felony and is not criminally liable for the injuries or death of the victim because he acted in self-defense. The accused is burdened to prove his affirmative defense with clear and convincing evidence and must rely on the strength of his own evidence and not on the weakness of that of the prosecution because even if the evidence of the prosecution is weak, it can no longer be disbelieved and the accused can no longer be acquitted.<sup>[11]</sup> To merit approbation, the accused must prove the essential requisites of complete self-defense, namely, (a) unlawful aggression on the victim's part; (b) reasonable necessity of the means used to prevent or repeal the unlawful aggression; and (c) lack of sufficient provocation on the part of the person defending himself.<sup>[12]</sup>

There can be no self-defense, complete or incomplete, unless the accused proves the first essential requisite – unlawful aggression on the part of the victim.<sup>[13]</sup> Unlawful aggression presupposes an actual, sudden and unexpected or imminent danger on the life and limb of a person – a mere threatening or intimidating attitude is not sufficient.<sup>[14]</sup> There must be actual physical force or a threat to inflict physical injury. In case of a threat, it must be offensive and positively strong so as to display a real, not imagined, intent to cause injury.<sup>[15]</sup> Aggression, if not continuous, does not constitute aggression warranting self-defense.<sup>[16]</sup>

In this case, the petitioner failed to prove with clear and convincing evidence his plea of self-defense, either complete or incomplete.

First. De Castro testified that the petitioner stabbed De Villa in the course of a fistfight. Even as the victim fled, the petitioner ran after the victim, saying, "*Saan ka man pumunta, papatayin kita:*"

Q: Between the hour of 9:30 and 9:35 in the evening of December 8, 1987, do you remember where you were?

A: Yes, sir.

Q: Where were you?

A: At about that time and date, between the hour of 9:00 and 9:35 in the evening of December 8, 1987, we were at Ilustre Avenue between the boundary of Lemery and Taal.

Q: While in that place at that time and date, do you remember if there is any unusual incident that took place?

A: Yes, sir.

Q: Will you please inform the Honorable Court what was that unusual incident that took place?

A: That incident started from a fistfight resulting in the stabbing of Pancrasio de Villa by Rogelio Garcia.

Q: Will you please inform this Honorable Court, how was this happened?

A: At about 9:35 at night while we were waiting for a fluvial procession, Rogelio Garcia and Pancrasio de Villa met and had