

SECOND DIVISION

[G.R. No. 160341, October 19, 2004]

EXEQUIEL SENOJA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

CALLEJO, SR., J.:

Before us is a petition for review on certiorari of the Decision^[1] of the Court of Appeals (CA) in *People v. Exequiel Senoja*, docketed as CA-G.R. CR No. 26564, affirming with modification the Decision^[2] of the Regional Trial Court (RTC) of Baler, Aurora, Branch 96, in Criminal Case No. 2259, for homicide.

The Case For the People

As culled by the Office of the Solicitor General (OSG) in its comment on the petition, the case stemmed from the following:

1. On April 16, 1997, petitioner Exequiel Senoja, Fidel Senoja, Jose Calica, and Miguel Lumasac were drinking gin in the hut of Crisanto Reguyal in Barangay Zarah, San Luis, Aurora. An angry Leon Lumasac suddenly arrived at the said place, holding a bolo in his right hand and looking for his brother Miguel. Petitioner and Jose tried to pacify Leon. But when petitioner approached Leon, the latter tried to hack him so he embraced Leon and Jose took Leon's bolo. Then, Leon and petitioner talked things out and later reconciled (pp. 2-4, TSN, November 16, 1998; pp. 2-4, TSN, August 30, 2002; p. 2, TSN, April 21, 1998; p. 5, TSN, March 14, 2001; p. 2, CA Decision).
2. Subsequently, Leon walked out of Crisanto's hut followed by petitioner. Suddenly, about ten meters from the hut, petitioner stabbed Leon at the back. When Leon turned around, petitioner continued stabbing him until he fell to the ground. Then, petitioner ran towards the barangay road and threw away the "kolonial" knife he used in stabbing Leon. The latter died on the spot (pp. 2-6, TSN, November 22, 2000; p. 5, TSN, August 30, 2002; p. 3, CA Decision).
3. Dr. Pura Deveza Valenzuela-Uy, San Luis Municipal Health Officer, examined the cadaver of Leon and found multiple lesions on his body and five fatal wounds on his chest. Dr. Uy issued a medico-legal report and death certificate (Exhibits A and B, pp. 13-14, Records; pp. 3-5, TSN, November 20, 1997).^[3]

On August 13, 1997, an Information was filed charging petitioner Exequiel Senoja with homicide, the accusatory portion of which reads:

That on April 16, 1997 at around 11 o'clock in the morning in Barangay Zarah, San Luis, Aurora, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there, willfully, unlawfully, and feloniously, with intent to kill, attack, assault, and use personal violence upon the person of one Leon Lumasac by then and there stabbing him with a bladed weapon locally known as "kolonyal" at the different parts of his body thereby inflicting upon the latter mortal stab wounds which were the direct and immediate cause of his death thereafter.

CONTRARY TO LAW.^[4]

The petitioner admitted killing the victim but invoked the affirmative defense of self-defense. His version of the fatal incident is set forth in his petition at bar:

1. On April 16, 1997 at about 11 o'clock in the morning, Crisanto Reguyal, Fidel Senoja, Jose Calica, Miguel Lumasac, and Exequiel Senoja were in the hut of Crisanto Reguyal in Barangay Zarah, San Luis, Aurora, drinking gin;
2. Leon Lumasac suddenly arrived holding a bolo and hacked the doorpost of Crisanto's hut, angrily demanding for his brother, Miguel Lumasac, whom he suspected of drying up the ricefield he was plowing;
3. At this time, Miguel Lumasac was no longer inside the hut but fetching water;
4. To prevent Leon Lumasac from entering the hut, Exequiel Senoja (appellant) and Jose Calica stood by the door while simultaneously trying to pacify Leon Lumasac;
5. Exequiel Senoja with a knife then went outside and tried to pacify Leon Lumasac but the latter angered by the gestures of the former tried to hack Exequiel Senoja;
6. To avoid any injury, Exequiel Senoja embraced Leon which gave an opportunity to disarm the duo. Jose Calica got the bolo of Leon and threw it away while Fidel Senoja took the "colonial" knife of Exequiel;
7. Jose Calica and Fidel Senoja were able to pacify Leon Lumasac so they invited him to get inside the hut. Inside the hut, Leon Lumasac tried to box Fidel Senoja for siding with his brother, Miguel, but was prevented by Exequiel Senoja who held Leon's hands;
8. After a while, Leon Lumasac left but returned and angrily demanded for his bolo. Jose Calica gave his own bolo with a sabbard to replace

the bolo of Leon which he threw away;

9. With Jose Calica's bolo in him, Leon Lumasac left but only after leaving a threat that something will happen to Exequiel Senoja for siding with his brother;
10. After walking for about 10 meters away from the hut, Leon Lumasac turned around and saw Exequiel Senoja on his way home following him;
11. Leon Lumasac walked back to meet Exequiel Senoja and upon reaching him, the former suddenly and treacherously hacked the latter at the left side of his head and right thigh;
12. Unable to evade the treacherous attack by Leon Lumasac who persisted in his criminal design, Exequiel Senoja drew his "colonial" knife and stabbed Leon Lumasac in self-defense, inflicting upon him multiple wounds which caused his death.^[5]

On June 7, 2002, the trial court rendered judgment against the petitioner, finding him guilty beyond reasonable doubt of the crime charged. The *fallo* of the decision reads:

WHEREFORE, premises considered, this Court finds accused Exequiel Senoja GUILTY beyond reasonable doubt of the crime of Homicide for the death of victim Leon Lumasac and hereby sentences him, applying Article 64, paragraph 1 of the Revised Penal Code and Section 1 of the Indeterminate Sentence Law, (a) to suffer the penalty of twelve (12) years of *prision mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum; (b) to pay the heirs of the victim the amount of Fifteen (sic) Thousand Pesos (Php 50,000.00) by way of civil indemnity; and (c) to pay the costs.

SO ORDERED.^[6]

In due course, the petitioner appealed the decision to the CA which rendered judgment affirming, with modification, the decision of the RTC. The petitioner now seeks relief from this Court, contending that:

The Honorable Court of Appeals failed to appreciate vital facts which, if considered, would probably alter the result of this case on appeal finding appellant's plea of self-defense credible.^[7]

The petitioner faults the CA for its analysis of his testimony, as follows:

The injuries suffered by the petitioner at the left side of his head and right thigh was confirmed by Dr. Rodolfo Eligio in open court. The relative positions of the wounds clearly show that the drunken Leon Lumasac brandished and executed several hacking blows against Exequiel Senoja before he was stabbed, neutralized and finished by the latter. It would be physically and highly improbable for the victim if he was treacherously hit at the left buttock and as he turned around to face the petitioner, the latter stabbed him successively and without let-up hitting him 9 times

resulting in 9 fatal wounds. This did not give a chance to the victim to retaliate and inflict those wounds upon the aggressor. The victim used Mr. Jose Calica's bolo which was secured by its scabbard. Unless earlier drawn, it would be impossible for the victim to use it in defending himself from the surprise attack and stabbing at a lightning fashion inflicting nine (9) fatal wounds. Time element was the essence of this encounter which, as narrated by the Honorable Court, after the assailant poked the victim at the left side of the buttock with the use of the "colonial" knife he stabbed him successively until he fell down dead. Under these circumstances, how could Exequiel Senoja suffered (*sic*) those hacking (*sic*) wounds inflicted by the victim using Calica's bolo? In all indications, it was Leon Lumasac who attacked his adversary first but lost in the duel considering that he was older than Exequiel Senoja and drunk. Clearly, therefore, it was Leon Lumasac who was the aggressor both in the first and second phases of the incident and Exequiel Senoja was compelled to defend himself.

A closer scrutiny of the attending circumstances which resulted in this stabbing incident shows that Exequiel Senoja has no compelling reasons to kill his godfather. On that same occasion, Mr. Exequiel Senoja was with the brother of the victim, Miguel Lumasac, which only shows that there was no pre-existing grudge between these families. And still, what titillates our imagination is the fact that Miguel Lumasac, who was then with the group drinking gin at the hut of Crisanto Reguyal did not clearly impute this crime to petitioner. On the contrary, when he was presented to the witness stand, he was very evasive in answering the questions profounded by the prosecutors if he wanted the petitioner to be imprisoned. Miguel Lumasac could have told the real truth that Senoja murdered his brother.^[8]

The CA declared that, based on the evidence on record:

As seen from appellant's testimony, Leon Lumasac's actions can be divided into two (2) phases: the first phase, when Leon entered Crisanto Reguyal's hut, up to the time he and the appellant reconciled. The second phase was when Leon left to go home. In phase one where Leon entered Reguyal's hut, Leon was the aggressor but his aggression was mostly directed to his brother Miguel who was not inside the hut anymore, although it was also partly directed at the appellant and even at Fidel Soneja (*sic*). But Leon's aggression against the appellant and Fidel Senoja ceased since, as appellant testified, when Leon tried to box Fidel Senoja and he (appellant) told Leon "Huwag po, Huwag po," Leon was pacified.

In the second phase, when Leon left the hut to go home, his aggression had already ceased.

It is uncontroverted that the appellant followed the victim when the latter went out of the hut to go home. Appellant's testimony is that when he was two meters outside the hut, Leon turned around to face him saying "**if you're not only my godson**" in a threatening way, then approached and hacked him (with Calica's bolo) inflicting wounds on the left side of

his head and his right thigh, thus, he (appellant) attacked the victim with the **kolonial** knife he was holding. That appellant suffered such injuries was corroborated by the testimony of Dr. Rodolfo Eligio.^[9]

The petition is denied.

Paragraph 1, Article 11, of the Revised Penal Code provides:

ART. 11. *Justifying circumstances.* – The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur;

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

The affirmative defense of self-defense may be complete or incomplete. It is complete when all the three essential requisites are present; it is incomplete if only unlawful aggression on the part of the victim and any of the two essential requisites were present. In fine, unlawful aggression on the part of the victim is a condition *sine qua non* to self-defense, complete or incomplete. Whether or not the accused acted in self-defense is a question of fact. Like alibi, the affirmative defense of self-defense is inherently weak because, as experience has demonstrated, it is easy to fabricate and difficult to disprove.^[10]

The right of self-defense proceeds from necessity and limited by it. The right begins where necessity does, and ends where it ends.^[11] There is, however, a perceptible difference between necessity and self-defense, which is that, self-defense excuses the repulse of a wrong; necessity justifies the invasion of a right. Hence, it is essential to self-defense that it should be a defense against a present unlawful attack.^[12]

Life can be taken under the plea of necessity, when necessary for the preservation of the life on the party setting up the plea. Self-defense is an act to save life; hence, it is right and not a crime.^[13] There is a need for one, indeed, for it is a natural right for one to defend oneself when confronted by an unlawful aggression by another. It is a settled rule that to constitute aggression, the person attacked must be confronted by a real threat on his life and limb; and the peril sought to be avoided is imminent and actual, not merely imaginary. Absent such an actual or imminent peril to one's life or limb, there is nothing to repel; there is no necessity to take the life or inflict injuries on another.^[14]

But then what is the standard to use to determine whether the person defending himself is confronted by a real and imminent peril to his life or limb? We rule that the test should be: does the person invoking the defense believe, in due exercise of