

SECOND DIVISION

[G.R. No. 126968, April 09, 2003]

RICARDO BALUNUECO, PETITIONER, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

DECISION

BELLOSILLO, J.:

On appeal by *certiorari* is the Decision^[1] of the Court of Appeals affirming with modifications the decision^[2] of the Regional Trial Court of Pasig City, Branch 68, convicting accused RICARDO BALUNUECO of homicide for the death of Senando Iguico and frustrated homicide for injuries inflicted upon his wife Amelia Iguico.

Of the five (5) original accused,^[3] only petitioner Ricardo, accused Reynaldo, Juanito, all surnamed Balunueco, and Armando Flores were indicted in two (2) Informations, the first for homicide^[4] and the second for frustrated homicide.^[5] Again, of the four (4) indictees, only Ricardo and Reynaldo were brought to the jurisdiction of the court *a quo*, while Juanito and Armando have remained at large. Accused Reynaldo died on 17 November 1986. Accordingly, as against him, the criminal cases were dismissed. Thus, only the criminal cases against petitioner Ricardo Balunueco are subject of this appeal.

As principal witness for the prosecution, Amelia Iguico narrated that on 2 May 1982 at around 6:00 o'clock in the evening she was coddling her youngest child in front of her house at Bagong Tanyag, Taguig, when she saw accused Reynaldo, his father Juanito and brothers Ricardo and Ramon, all surnamed Balunueco, and one Armando Flores chasing her brother-in-law Servando Iguico. With the five (5) individuals in hot pursuit, Servando scampered into the safety of Amelia's house.

Meanwhile, according to private complainant Amelia, her husband Senando, who was then cooking supper, went out of the house fully unaware of the commotion going on outside. Upon seeing Senando, Reynaldo turned his attention on him and gave chase. Senando instinctively fled towards the fields but he was met by Armando who hit him with a stone, causing Senando to feel dizzy. Reynaldo, Ricardo, and Armando cornered their quarry near a canal and ganged up on him. Armando placed a can on top of Senando's head and Ricardo repeatedly struck Senando with an ax on the head, shoulder, and hand. At one point, Ricardo lost his hold on the ax, but somebody tossed him a *bolo* and then he continued hacking the victim who fell on his knees. To shield him from further violence, Amelia put her arms around her husband but it was not enough to detract Ricardo from his murderous frenzy. Amelia was also hit on the leg.^[6]

Dr. Maximo Reyes, NBI Senior Medico-legal officer, declared that on 3 May 1982 he conducted a post mortem examination on the body of the deceased Senando Iguico

and issued an Autopsy Report, which contained the following findings:^[7] (a) two (2) stab wounds and nine (9) gaping hack wounds; and, (b) cause of death was hemorrhage, acute, profuse, secondary to multiple stab and hack wounds.

In his defense, accused Ricardo narrated a different version of the incident. He testified that at that time he was fetching water when he heard somebody shouting: "*Saya, saya, tinataga,*" referring to his brother Reynaldo. When he hurried to the place, he saw his brother Ramon embracing Senando who was continuously hacking Reynaldo. Thereafter, Senando shoved Ramon to the ground and as if further enraged by the intrusion, he turned his *bolo* on the fallen Ramon. Ricardo screamed, "*tama na yan, mga kapatid ko 'yan.*" But the assailant would not be pacified as he hacked Ramon on the chest. At this point, Servando,^[8] the brother of Senando, threw an axe at him but Reynaldo picked it up and smashed Senando with it.

Manuel Flores, another witness for the defense, gave a substantially similar version of the story. He testified that on the fateful day of the incident, while doing some carpentry work in front of his mother's house, he saw Senando Iguico,^[9] a.k.a. "Bulldog," with a *bolo* on hand trailing brothers Reynaldo alias "Sayas" and Ramon while walking towards Bagong Bantay. Suddenly, Senando confronted the two (2) brothers and started hacking Reynaldo, hitting him on the head, arm and stomach. Seeing that his brother was absorbing fatal blows, Ramon embraced Senando but the latter shoved him (Ramon) and directed his fury at him instead. Ricardo went to the rescue of his brothers but he too was hacked by Senando.

The trial court disbelieved the version of accused Ricardo, thus he was found guilty of homicide in Crim. Case No. 49576 and frustrated homicide in Crim. Case No. 49577. It reasoned that the testimony of Amelia Iguico was clear, positive, straightforward, truthful and convincing. On the other hand, according to the trial court, the denial of Ricardo was self-serving and calculated to extricate himself from the predicament he was in. Further, the trial court added that the wounds allegedly received by Ricardo in the hands of the victim, Senando Iguico, if at all there were any, did not prove that Senando was the aggressor for the wounds were inflicted while Senando was in the act of defending himself from the aggression of Ricardo and his co-conspirators.^[10]

The Court of Appeals sustained the conviction of accused Ricardo, giving full faith to the direct and positive testimony of Amelia Iguico who pointed to him as the one who initially axed her husband Senando on the head, shoulder and hand.^[11] While the appellate court upheld the conviction of Ricardo of homicide for the death of Senando Iguico, it however ruled that his conviction for the wounding of Amelia Iguico, although likewise upheld, should be for attempted homicide only. On the wounding of Amelia, the appellate court had this to say - ^[12]

For while intent to kill was proven, Amelia's hack wound in her left leg was not proven to be fatal or that it could have produced her death had there been no timely medical attention provided her, hence, the stage of execution of the felony committed would only be attempted.

Petitioner now imputes errors to the Court of Appeals: (a) in not taking into consideration the fact that petitioner, if indeed he participated, had acted in defense of relatives; (b) in giving due credence to the self-serving and baseless testimony of

Amelia Iguico, the lone and biased witness for the prosecution; and, (c) in failing to consider the several serious physical injuries sustained by petitioner and his brother Reynaldo Balunueco.

In a reprise of his stance at the trial, petitioner argues that assuming he participated in the killing of Senando, he acted in defense of his full-blood relatives: Reynaldo whom he personally witnessed being *boloed* by the deceased in the arms, head and stomach; and Ramon who also became a victim of the deceased's fury after he was pushed by the deceased and had fallen to the ground. Under such circumstances, the act of Senando in hacking him after he tried to rescue his brothers, gave rise to a reasonable necessity for him to use a means to prevent or repel the unlawful aggression. Considering further that there was lack of sufficient provocation on his part, his acts were therefore justified under Art. 11, par. (2), of *The Revised Penal Code*.

In effect, petitioner invokes the justifying circumstance of defense of relatives under Art. 11, par. (2), of *The Revised Penal Code*. The essential elements of this justifying circumstance are the following: (a) unlawful aggression; (b) reasonable necessity of the means employed to prevent or repel it; and, (c) in case the provocation was given by the person attacked, the one making the defense had no part therein.

Of the three (3) requisites of defense of relatives, unlawful aggression is a condition *sine qua non*, for without it any defense is not possible or justified. In order to consider that an unlawful aggression was actually committed, it is necessary that an attack or material aggression, an offensive act positively determining the intent of the aggressor to cause an injury shall have been made; a mere threatening or intimidating attitude is not sufficient to justify the commission of an act which is punishable *per se*, and allow a claim of exemption from liability on the ground that it was committed in self-defense or defense of a relative. It has always been so recognized in the decisions of the courts, in accordance with the provisions of the Penal Code.^[13]

Having admitted the killing of the victim, petitioner has the burden of proving these elements by clear and convincing evidence. He must rely on the strength of his own evidence and not on the weakness of that of the prosecution, for even if the prosecution evidence is weak it cannot be disbelieved if the accused has admitted the killing.^[14]

In the case at bar, petitioner Ricardo utterly failed to adduce sufficient proof of the existence of a positively strong act of real aggression on the part of the deceased Senando. With the exception of his self-serving allegations, there is nothing on record that would justify his killing of Senando.

First, Ricardo's theory that when he reached the crime scene he found Senando repeatedly hacking his brother Reynaldo who thereafter retaliated by smashing an axe on the victim's head is implausible in light of the seriousness of the wounds sustained by the deceased as compared to the minor injuries inflicted upon petitioner and his two (2) brothers. The fact that three (3) of the assailants suffered non-fatal injuries bolsters the fact that Senando tried vainly to ward off the assaults of his assailants.