

EN BANC

[G.R. Nos. 140557-58, December 05, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDGARDO HERRERA, ACCUSED-APPELLANT.**

DECISION

YNARES-SANTIAGO, J.:

On May 29, 1996 at around 6:30 p.m., Enrique Ganan was sitting on a steel chair at his home eating fishballs while cuddling his youngest child. He was engaged in a conversation with Ma. Rizza Aguilar and his brother Edwin. His wife, Mariel was situated a few meters away. At the same time, Corazon Cajipo was chatting with a friend about ten (10) meters away. The calm evening air was shattered when someone armed with a .38 caliber revolver suddenly approached Enrique from behind and fired at close range. Although wounded, Enrique managed to pass his child to his brother in the ensuing uproar and attempted to crawl to safety. His attacker, however, followed and pumped more bullets into him. After firing the sixth shot, the assailant casually walked away. When the smoke cleared, Enrique Ganan and Corazon Cajipo, who caught a slug in her temple, lay bloodied and fatally wounded.

For the killing of Enrique, accused Edgardo Herrera was charged with Murder in an Information, docketed as Criminal Case No. 96-9225, whose accusatory portion alleges:

That on or about the 29th of day of May 1996, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, EDGARDO C. HERRERA alias "JUN", did then and there willfully, unlawfully and feloniously with intent to kill and qualified with treachery shoot one ENRIQUE GANA Y DURA with a .38 caliber revolver on the vital parts of the body which caused his instantaneous death.

Contrary to law.^[1]

For Corazon's death, Herrera was indicted for Homicide in an Information, docketed as Criminal Case No. 96-9226, alleging -

That on or about the 29th day of May 1996, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused EDGARDO C. HERRERA alias "JUN", with deliberate intent to kill, did then and there willfully, unlawfully and feloniously shoot one ENRIQUE GANA y DURA with a .38 caliber revolver and as a consequence of which hit one CORAZON CAJIPO y FULGENCIO causing upon the latter a mortal wound which caused her instantaneous death.

Contrary to law.^[2]

Upon arraignment on November 7, 1996, accused entered a plea of "Not Guilty" to the crimes charged.^[3] The cases were consolidated^[4] and tried jointly.

Subsequently, the court *a quo* rendered judgment against accused, finding him guilty beyond reasonable doubt of both crimes, thus:

WHEREFORE, judgment is hereby rendered in the aforementioned cases as follows;

(1) In Criminal Case No. 96-9225, the Court finds the herein accused EDGARDO HERRERA GUILTY beyond reasonable doubt of MURDER, defined and penalized in Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, and in view of the presence of qualifying circumstances of Treachery (Article 14, par. 16, Revised Penal Code) and also the aggravating circumstance of taking advantage by the accused of his public position, (Article 14, par. 1, Revised Penal Code), the Court hereby sentences him to suffer the supreme penalty of DEATH; and

(2) In Criminal Case No. 96-9226, the Court finds herein accused EDGARDO HERRERA GUILTY beyond reasonable doubt of HOMICIDE defined and penalized in Article 249 of the Revised Penal Code, and in view of the presence of the aggravating circumstance of taking advantage of his public office (Article 14, par. 1, Revised Penal Code) and there being no mitigating circumstance to offset it, the Court hereby sentences him to suffer an Indeterminate Penalty ranging from Ten (10) Years and One (1) Day of *Prision Mayor* as Minimum to Seventeen (17) Years, Four (4) Months and One (1) Day of *Reclusion Temporal* as Maximum.

Accused is further ordered to pay the legal heirs of Enrique Ganan the amount of P50,000.00 as indemnity for the death and P50,000.00 for moral and exemplary damages.

Likewise, accused is ordered to pay the heirs of Corazon Cajipo the amount of P50,000.00 as indemnity for the death, P50,000.00 as moral and exemplary damages and the additional sum of P25,000.00 as actual damages for funeral and burial expenses.

Costs against herein accused in both cases.

SO ORDERED.^[5]

On automatic review before this Court, accused professes his innocence, alleging that-

EDGARDO HERRERA GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER AND HOMICIDE AND IN DISREGARDING HIS TESTIMONY THAT HE ACTED ONLY IN SELF-DEFENSE.

II

ASSUMING FOR THE SAKE OF ARGUMENT THAT ACCUSED-APPELLANT IS GUILTY, THE TRIAL COURT ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.

III

THE TRIAL COURT LIKEWISE ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE THAT ACCUSED TOOK ADVANTAGE OF HIS POSITION AS POLICE OFFICER.

On the other hand, the Solicitor General recommends that the penalty of Death be reduced to *Reclusion Perpetua* in Criminal Case No. 96-9225; and that the maximum penalty imposed in Criminal Case No. 96-9226, be within the medium period of *Reclusion Temporal*.

The prosecution's version of the incident is summed thus in the People's brief:

On May 29, 1996, around 6:30 p.m., Enrique Ganan was sitting on a steel chair at the compound premises of his home at 2218 Cinco de Junio Street, Pasay City,^[6] near the corner of Propetario Street eating fishballs and cuddling is youngest daughter while engaged in a conversation with Ma. Rizza Aguilar.^[7] His wife, Mariel Ganan, was about 1 ½ to 2 meters away from him. A neighbor, Corazon Cajipo, was chatting with Elena Sobrevilla and other neighbors while resting her chin on the fence at a distance of more or less 10 meters away from where Enrique Ganan was seated.^[8]

Appellant emerged from Propetario Street behind Enrique Ganan and positioning himself at his right side, placed his left hand on Ganan's right shoulder and uttered: "*Saan si Pareng Yayi*" (referring to deceased Enrique Ganan) while his right hand pointed a gun at Enrique Ganan. He immediately fired it at close range hitting Ganan at the right side of his the neck near his head.^[9] Commotion ensued. Immediately after the first shot was fired, Enrique Ganan, although wounded, stood up and passed the child he was cuddling to his brother. Appellant shot him again.^[10] At that instance, witness Ma. Rizza Aguilar took her daughter and Ganan's eldest daughter and ran for safety. Witness Ma. Elena Sobrevilla took Ganan's other child who was then running to her father. After the second shot Ganan was already sprawled on the ground but still tried to escape by crawling on the cement floor towards the direction of his house. Appellant still pursued him and fired several more shots hitting Ganan in different parts of the body. After the sixth shot, accused casually walked away from the crime scene. Elena Sobrevilla heard that a stray bullet hit somebody. When she turned her gaze to Cajipo, she found her lying on the ground with the left side of her head drenched in blood. Two bodies

were found lying in the premises - that of Corazon Cajipo with a bloodied head and that of Enrique Ganan with several gunshot wounds. It was only then that Ganan's wife, Mariel, who was dumbfounded by the whole shooting incident, found the nerve to run to her husband and embrace him. She still found him breathing. Neighbors arrived and brought Enrique Ganan to the Manila Sanitarium Hospital but he was pronounced dead on arrival.^[11]

The body of Enrique Ganan and Corazon Cajipo were brought to the Veronica Memorial Chapel, Pasay City for autopsy as shown by the Requests for Autopsy.^[12] The autopsy on the cadavers of Enrique Ganan and Corazon Cajipo were conducted by Dr. Ludovico J. Lagat, Medico Legal Officer of the NBI on May 29, 1996. xxx xxx xxx.

In the first assigned error, accused-appellant admits having killed the victim but asserts that he did so in self-defense. To bolster his cause, accused-appellant contends that all the elements of self-defense are present in this case. First, he claims that there was unlawful aggression because the victim allegedly tried to grab his gun when he asked the latter what really happened during the birthday of Rene Carrasco. Second, he points out that in anticipation of the imminent danger posed when the victim allegedly tried to go for accused-appellant's gun, he had to use "reasonable means most immediate to the person being unlawfully attacked and resist such force without much contemplation of the means of the method to be used."^[13] Thus, according to him, his act of shooting the hand of the victim to stop the latter from reaching for his gun "is nothing but proof of spontaneous reflexes of self-preservation and should not be taken against him."^[14] Third, he insists that he did not provoke the victim because he was merely asking him what really transpired during the birthday celebration of Rene Carrasco where he lost consciousness. He wanted to know whether it was true that the victim and his cohorts kicked him and urinated on him while he was unconscious.

In ***People v. Cabansay***,^[15] we reiterated the rule that self-defense, "[a]s a justifying circumstance shifts the prosecutorial burden of proving the guilt of the accused to the accused himself who must prove the elements of such defense, to wit: 1.) unlawful aggression on the part of the victim; 2.) reasonable necessity of the means employed to prevent or repel it; and 3.) lack of sufficient provocation on the part of the person defending himself."^[16] It is incumbent upon the accused to rely on the strength of his own evidence which must be clear, sufficient and convincing, and not on the weakness of the evidence for the prosecution."^[17]

A circumspect scrutiny of accused-appellant's version of what happened, however, leaves the Court unconvinced that he killed Enrique Ganan in self-defense.

According to accused-appellant, two (2) days prior to the incident or on May 27, 1996 at about 5:30 p.m. while he was cooling himself outside his house, the victim and one Tito approached him and invited him to attend in the birthday celebration of Rene Carrasco alias *Tokwa*.^[18] The celebration was held at the house of the victim.^[19] Upon his arrival, accused-appellant greeted the celebrant and shook his hand.^[20] He likewise shook the hand of Enrique Ganan, who was his *kumpadre*, he being the godfather of one of the latter's children.^[21] Accused-appellant was then handed

a bottle of beer which he took to one side and drank sparingly inasmuch as he planned not to stay long because he was then recuperating from injuries he sustained when his car collided with a jeep.^[22]

When the bottle of beer was almost consumed, he asked permission to leave from the celebrant and Enrique, but he was handed another beer by the victim and was prevailed upon to remain and to join the others seated at the table.^[23] He, however, informed Rene Carrasco and Enrique that the second beer would be his last and he would be leaving after that because he was still recovering from the vehicular mishap.^[24] After consuming the second bottle, he stood up and bade leave of the people present, however, after doing so he passed out.^[25] He was brought home by one Edmund Del Mundo and a certain Bong^[26] where he regained consciousness.^[27]

Suspecting that his drink was drugged, accused-appellant induced himself to vomit by inserting a finger in his throat.^[28] After vomiting, he again lost consciousness and awoke at around 10:00 a.m. the next morning.^[29] He was told by his wife that the two (2) men who brought him home left his service firearm which, upon examination, he discovered to have only one bullet left as the rest were already fired.^[30] After examining his revolver, his attention was called by his wife who told him that her cousin Gigi Cajipo, mother of Corazon Cajipo, wanted to talk to him.^[31] Gigi then informed him that when he passed out, Enrique Ganan and the other people present during the birthday celebration fired his handgun and made fun of him by kicking him and urinating on him.^[32]

Skeptical at first that his *kumpadre* would humiliate him thus, accused-appellant then decided to confront the victim about what really transpired during the drinking session.^[33] He then instructed a boy named Gardo to check if the victim was at home,^[34] and upon being informed by the latter that Ganan was already in his house, accused-appellant reloaded his revolver and walked over to the victim's place.^[35] He came upon Ganan sitting on a white chair talking to several people.^[36] What happened thereafter is narrated by accused-appellant, to wit:

ATTY. POLLO

Q In what manner did you greet the deceased Ganan?

A I greeted him good afternoon Pare, something bad might have happened during the birthday celebration of Rene Carrasco and its quite shameful.

Q And what did he do after you greeted him?

A I first asked Yaye what really transpired because I lost consciousness during that time.

Q What in the first place was your purpose in talking with Ganan?

A To know the whole truth of what really transpired when I lost consciousness and if they really kick[ed] and urinated [on] me and did something "*pambababoy sa akin*" and if its true we might as well forget each other as *kumpare* and return its (*sic*) other's candle and that if it's true also I'd rather leave that