

## SECOND DIVISION

[ G.R. No. 129252, November 28, 2000 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FRANCISCO CABER, SR., ACCUSED-APPELLANT.**

### D E C I S I O N

**MENDOZA, J.:**

This is an appeal from the decision<sup>[1]</sup> of the Regional Trial Court, Branch 9, Tacloban City, finding accused-appellant Francisco Caber, Sr. guilty of murder and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the heirs of Teodolfo Ramirez the amount of P50,000.00 as indemnity.

The information against accused-appellant alleged:

That on or about the 20th day of November, 1994 in the City of Tacloban, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with intent to kill and with treachery and evident premeditation, armed with a bladed weapon (fan knife), did, then and there willfully, unlawfully and feloniously attack, assault, stab and wound one TEODOLFO RAMIREZ on his chest, thereby inflicting upon said TEODOLFO RAMIREZ stab wounds which caused his death.<sup>[2]</sup>

Accused-appellant pleaded not guilty to the charge and trial of the case followed.

The prosecution presented evidence showing the following:

At around 7:30 in the morning of November 20, 1994, Julian Rama, who was in the front yard of his house in Barangay 80, Marasbaras, Tacloban City, saw accused-appellant Francisco Caber, Sr. chasing Teodolfo Ramirez with a bladed weapon locally known as *pisao*. Rama knew both because Caber was his fellow barangay *tanod* while Ramirez was his *kumpadre*. The latter ran towards him asking for help. Rama said he raised his hands as he told Caber "*Pare*, don't come near us!" but his plea was not heeded. Although Ramirez sought cover behind Rama, accused-appellant was able to stab him (Ramirez) twice on the chest. Rama called on his neighbors to help, but they got scared and fled. Accused-appellant surrendered to Rama who instructed another *tanod* to take accused-appellant to the city police station.<sup>[3]</sup>

Rama and still another companion took Ramirez to the Tacloban City Hospital where he was pronounced dead on arrival. The attending physician, Dr. Leo B. Lagado, issued the following medico-legal report (Exh. B), dated October 3, 1995:

Stab wound, about 1-cm. in length, mid-sternal area at the level of the nipple, penetrating the left thoracic cavity.

Stab wound, about 2-cm. in length, left parasternal area, 1st intercostal space penetrating the left thoracic cavity.

. . . .

REMARKS: Dead on arrival at hospital Emergency Room.<sup>[4]</sup>

Dr. Lagado testified that the victim died of hypovolemic shock secondary to the stab wounds. He opined that the stab wounds were caused by a bladed weapon, possibly by the fan knife locally known as *pisao*. The two stab wounds were fatal and the one in the mid-sternal area, which penetrated the victim's left thoracic cavity, by itself, could have caused the death of Ramirez.<sup>[5]</sup>

Accused-appellant testified in his behalf. He admitted killing Ramirez, but he claimed that he did so in self-defense. He declared that he was 63 years old, married, and that he worked at the Mercado's Caltex Gasoline Station in front of the Divine Word University in Tacloban City. He claimed that at around 7:30 in the morning of November 20, 1994, he took a pedicab to work. Just after he had alighted from the vehicle, he heard someone shout, "*Manong* Caber, someone is going to kill you!" Instinctively, he turned around and caught Ramirez' hand as the latter was about to stab him. Accused-appellant said he was able to parry the blow, turn the knife towards his attacker, and thrust it to the latter's chest. Accused-appellant claimed that Ramirez then ran towards Rama's house; that he gave chase; and that after catching up with Ramirez, he stabbed the latter on the chest once. Thereafter, he surrendered to a barangay *tanod* at the police outpost near the City Hospital and was detained at the Tacloban City Jail.<sup>[6]</sup>

Accused-appellant claimed that his wife, Adelina Caber, had filed a rape case on November 18, 1994 against the deceased, as a result of which Ramirez was arrested and detained. He said that prior to the stabbing incident, he did not know that Ramirez had been released from jail. He denied having harbored any grudge against the victim for what the latter had done to his wife.<sup>[7]</sup>

Adelina Caber corroborated her husband's testimony that on November 18, 1994, she filed a complaint for rape against Ramirez for which reason he was arrested and detained at the city jail on the same day. Asked whether her husband harbored any grudge against accused-appellant, Adelina Caber said that her husband merely told her that he was not going to harm her if she told everything to him.<sup>[8]</sup>

On August 20, 1996, the trial court rendered judgment the dispositive portion of which reads:

WHEREFORE, premises considered, the Court hereby finds accused, Francisco Caber, Sr. GUILTY beyond reasonable doubt of the crime of Murder and considering in favor of the accused the mitigating circumstance of passion [or] obfuscation, the Court hereby imposes upon the accused the penalty of reclusion perpetua, together with all its accessory penalties. Furthermore, the Court hereby orders accused to pay the heirs of the victim the amount of P50,000.00 by way of indemnification for the damage and suffering caused the heirs of the victim.<sup>[9]</sup>

Hence this appeal. Accused-appellant contends that <sup>3</sup>/<sub>4</sub>

I. THE COURT A QUO GRAVELY ERRED IN RELYING SOLELY ON THE EYEWITNESS ACCOUNT OF JULIAN RAMA AND DISREGARDING COMPLETELY THE TESTIMONY OF THE ACCUSED-APPELLANT THAT HE WAS PREVIOUSLY ATTACKED BY THE VICTIM AND HE MERELY ACTED IN SELF-DEFENSE.

II. GRANTING ARGUENDO THAT THERE WAS NO SELF-DEFENSE, THE COURT A QUO STILL ERRED IN FINDING THE ACCUSED GUILTY OF MURDER AND [IN] NOT APPRECIATING FURTHER THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.<sup>[10]</sup>

**First.** Accused-appellant claims he acted in self-defense in killing Ramirez. He contends that the prosecution witness, Julian Rama, witnessed only the second stage of his encounter with Ramirez, *i.e.*, when he chased Ramirez and stabbed him, but the initial aggression was actually committed by Ramirez by attacking him.<sup>[11]</sup>

This contention has no merit. To begin with, by invoking self-defense, accused-appellant admits to the crime for which he is charged and, therefore, it becomes incumbent upon him to prove (a) that the victim was guilty of unlawful aggression; (b) that there was reasonable necessity for the means employed by him to repel the aggression; and (c) that there was sufficient provocation on his (accused-appellant's) part.<sup>[12]</sup> Proof of the first requirement (unlawful aggression of the victim) is indispensable since the theory of self-defense is based on the necessity on the part of the person being attacked to prevent or repel the unlawful aggression. Even if initially there was unlawful aggression, the person attacked has no more right to kill or wound the former aggressor the moment the aggression ceases. When the danger or risk to him has disappeared, there should be a corresponding cessation of hostilities on the part of the person defending himself.<sup>[13]</sup>

In the case at bar, the evidence for the prosecution shows that accused-appellant ran after and then stabbed Ramirez twice, hitting him on the chest as the latter tried to seek cover behind Rama. This circumstance negates the presence of unlawful aggression on the part of the victim.

Accused-appellant claims that it was Ramirez who initially attacked him with a knife. Assuming this to be true, it would nonetheless appear that Ramirez's unlawful aggression had already ceased when he was stabbed by accused-appellant because, by the latter's own account, Ramirez ran away after accused-appellant turned the knife toward him and thrust it to him. If accused-appellant's claim is to be believed, Ramirez was already running away but accused-appellant still pursued him. There was clearly no longer any danger to accused-appellant. In *People v. Alconga*,<sup>[14]</sup> the alleged aggressor, after being wounded, ran away but the accused nevertheless pursued and then mortally wounded him. This Court rejected the plea of self-defense and held that after the victim had already fled, the accused's right to inflict injury upon the assailant ceased.<sup>[15]</sup>

Accused-appellant's defense is further weakened by his failure to present any corroborating evidence. He claimed that, without provocation, Ramirez tried to stab