

THIRD DIVISION

[G.R. No. 139822, December 06, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SALVADOR CAGUING, ACCUSED-APPELLANT.**

DECISION

MELO, J.:

Accused-appellant Salvador Caguing was charged with the crime of murder in Criminal Case No. 34267 of the Regional Trial Court of the Sixth Judicial Region (Branch 33, Iloilo City), under the following Information:

That on or about the 12th day of December, 1989, in the Municipality of Cabatuan, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, with deliberate intent and decided purpose to kill, with treachery and evident premeditation, armed with a 12 gauge homemade shotgun, commonly known as "pugakhang" and without any justifiable cause or motive, did then and there wilfully, unlawfully and feloniously assault, attack and shoot one ALLAN DOMINGUEZ with the firearm accused was then provided, inflicting upon said victim fatal gunshot wound on the head which caused the immediate death of said Allan Dominguez.

Contrary to law.

(p. 8, Rollo.)

At his arraignment on August 27, 1997, accused-appellant entered a plea of not guilty. Trial ensued thereafter.

The prosecution's version of the generative facts as gathered from the testimony of its witnesses - Guillermo Dominguez, father of the victim, and Annalyn Dominguez, sister of the victim - is abstracted in the Appellee's Brief, as follows:

At around 9:00 o'clock in the evening of December 12, 1989, prosecution witnesses Guillermo Dominguez and his Daughter Annalyn Dominguez, together with his son, Allan Dominguez, were in the house of the spouses Gonzalo and Duliana Cornita situated at Janipaan Central, Cabatuan, Iloilo.

Appellant Salvador Caguing and his companion Bebot Malcaredo were also inside said house. Appellant was engaged in conversation with the spouses Gonzalo and Duliana Cornita. In the course thereof, appellant

asked for the identity of Allan Dominguez.

After finding out the identity of Allan, appellant suddenly shot the former on the head with a shotgun resulting in his instantaneous death. Allan was seated on a chair beside a table while appellant was standing when the former was fatally shot.

Afterwards, appellant reloaded his shotgun and warned the people inside the house not to move. Thereafter, appellant and his companion Bebot Malcaredo fled.

(pp. 84-85, Rollo.)

Dr. Mae Albacite, the Rural Health Physician who conducted the autopsy on the victim's body, testified: that the cause of death of the victim was severe hemorrhage from a skull fracture due to a gunshot wound in the head; that the wound was located at the forehead, front with frontal and parietal bones missing which are parts of the skull; that the frontal lobe of the brain was already scattered on the face and skull of the victim; that there was the presence of an incised and gaping wound two inches by five inches located above the right ear up to the backbone located at the right side of the back; that the wound located at the frontal area with missing frontal and parietal bones was caused by a gunshot; that with regard to the incised wound, it had rugged edges which could have been caused by a blunt object and there was the probability that it was caused by forcible tearing of the tissue due to impact of the gunshot; that even with adequate medical attention the probability of the victim living was nil because a vital organ was involved; and that there is a probability that the assailant was in front of the victim.

The version of the defense is based on the testimony of Noe Malcaredo yBebot, friend of accused-appellant, and accused-appellant himself. Accused-appellant denied the charge. The defense that accused-appellant and the victim had an altercation and that he shot the victim in self-defense was also advanced.

On March 20, 1999, a judgment of conviction was rendered, disposing:

WHEREFORE, this Court finds and so holds that:

1. Accused Salvador Caguing y Caballero is guilty of Murder as defined and penalized by Art. 248, Revised Penal Code, as proven beyond reasonable doubt by the evidence on record;
2. The penalty of Reclusion Perpetua is hereby imposed upon him because neither aggravating nor mitigating circumstance is present.
3. Accused Salvador Caguing is further ordered to indemnify the heirs of the victim Allan Dominguez the amount of P50,000.00; to pay the amount of P50,000.00 as exemplary damages and the sum of P30,000.00 as moral damages, and with subsidiary imprisonment in case of insolvency.

SO ORDERED.

(pp. 24-25, Rollo.)

In accused-appellant's brief, he assigns the following alleged errors:

I

THE TRIAL COURT ERRED IN NOT FINDING THAT THE ACCUSED, AFTER DISARMING THE VICTIM, SHOT THE SAID VICTIM IN SELF-DEFENSE.

II

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE "DEMEANOR" OF THE PROSECUTION WITNESSES WHEN IN FACT THE PRESIDING JUDGE NEVER WITNESSED IN COURT SAID "DEMEANOR" BECAUSE HE TOOK OVER THE CASE ONLY AFTER THE PROSECUTION HAS RESTED.

III

THE TRIAL COURT ERRED IN MAKING FINDINGS NOT BASED OR FOUND IN THE TRANSCRIPT OF STENOGRAPHIC NOTES WHICH INDICATE THE PRESIDING JUDGE DID NOT EXTENSIVELY GO OVER THE SAME, AS HE SHOULD DO, HAVING TAKEN OVER IN HEARING THE CASE ONLY AFTER THE PROSECUTION HAS RESTED.

(pp. 39-40, Rollo.)

He particularly argues that treachery is negated by the fact that if accused-appellant were indeed armed when he arrived at 8 o'clock in the evening, an hour prior to the shooting incident, that would have already put the victim on guard; that both prosecution witnesses never testified that accused-appellant was armed when he entered the place of the incident and their testimony are full of inconsistencies; that it was the victim's persistence in attacking accused-appellant with a knife which led accused-appellant to shoot the victim in self-defense; and lastly, the declarations of the prosecution witnesses do not indicate any possible motive for accused-appellant to shoot the victim.

Undisputed is the fact that accused-appellant shot one Allan Dominguez. Categorically, he admitted that he shot the victim once in the forehead but asserts that he did so in self-defense.

In self-defense, the burden of proof rests upon the accused (People vs. Timblor, 385 SCRA 64 [1998]). It is incumbent upon him to prove by clear and convincing evidence that he indeed acted in defense of himself, otherwise, conviction would follow from his admission that he killed the victim (People vs. Cario, 288 SCRA 404

[1998]). There are three requisites to prove the claim of self-defense: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed by the accused to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.

Unlawful aggression presupposes an actual, sudden, and unexpected attack, or imminent danger thereof (*People vs. Aguilar*, 292 SCRA 349 [1998]). The person defending himself must have been attacked with actual physical force or with actual use of weapon. Unlawful aggression is a condition *sine qua non* for the justifying circumstance of self-defense, there can be no self-defense, complete or incomplete, unless the victim has committed unlawful aggression against the person defending himself (*People vs. Cario, supra* [1998]).

In this case, the testimony of accused-appellant himself belies the claim that he merely acted to prevent or repel the unlawful aggression allegedly coming from the victim. Accused-appellant's unequivocal statements in open court lead to the conclusion that, assuming *arguendo* that the victim indeed attempted to shoot accused-appellant with a handgun, this aggression had ceased by the time accused-appellant was able to take possession of the gun. In other words, when accused-appellant successfully grabbed the gun from the victim, there was no longer any unlawful aggression to prevent or repel. And this Court has consistently held that when the unlawful aggression which has begun no longer exists, the one making the defense has no more right to kill or even wound the former aggressor (*People vs. Albao*, 287 SCRA 129 [1999]; *People vs. Sambulan*, 239 SCRA 500 [1999]). Withal, a finding that there was no longer any unlawful aggression when the accused shot the victim rules out the possibility of self-defense, whether complete or incomplete (*David vs. Court of Appeals*, 290 SCRA 727 [1998]).

Just to be on the safe side, accused-appellant embellishes his story by alleging that the victim, after having been disarmed of the gun, continued his aggression with a knife. Here now comes the second element of self defense. For such posture to be properly appreciated, there should be a necessity in both the action taken as well as in the means used, and the latter depends on whether the aggressor himself was armed, the nature and quality of the weapon used, and the physical conditions and sizes of both the aggressor and the person defending himself (*Escoto vs. CA*, 273 SCRA 752 [1997]). Undoubtedly, if it is true that the victim had a knife and accused-appellant had a gun, his shooting the victim may not be justified as accused-appellant could not have been in any real danger of his life. The knife was no match to the home-made handgun of accused-appellant and, in fact, there is no evidence that accused-appellant sustained any injuries evincive of an aggression which would justify his firing the gun to protect himself. Thus, the shooting was unwarranted and was an unreasonable act of violence, even as a means of defense, under the circumstances. Moreover, accused-appellant left his victim and did not even bother to report the matter to the proper authorities. In this light, the justifying circumstance of self-defense may not survive in the face of accused-appellant's flight from the crime scene, and his failure to inform the authorities of the incident (*People vs. Gerolaga*, 263 SCRA 143 [1997]). Too, no knife was found in the crime scene, thus negating his tale of a second aggression.

All told, the plea of self-defense cannot be justifiably entertained where it is not only uncorroborated by any separate competent evidence but is also extremely doubtful in itself (*Jacobo vs. CA*, 270 SCRA 270 [1997]). Accused-appellant having failed to