

THIRD DIVISION

[G.R. No. 125185, May 05, 1999]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE,
VS. VIRGILIO BORREROS, DEFENDANT AND APPELLANT.**

DECISION

PURISIMA, J:

At bar is an appeal by accused Virgilio Borreros from the Decision^[1] dated May 13, 1996 of Branch 225 of the Regional Trial Court of Quezon City in Criminal Case No. Q-91-21890, finding him guilty of the crime of Murder, and sentencing him thus:

"WHEREFORE, premises considered, the Court hereby finds the accused Virgilio Borreros GUILTY beyond reasonable doubt of the crime of Murder qualified by treachery for the killing of FEDERICO G. MEDINA. Considering that the death penalty was proscribed at the time said accused committed the crime, he is hereby sentenced to suffer the penalty of *reclusion perpetua* and to pay P50,000.00 as civil indemnity for the death of the said victim.

Furthermore, the Court likewise finds the said accused GUILTY beyond reasonable doubt of the crime of Homicide for the killing of DANILO E. ALMARIO there being no mitigating circumstance and applying the provisions of the Indeterminate Sentence Law, the said accused is hereby sentenced to suffer an indeterminate penalty of from ten (10) years of *prision mayor* as minimum to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* as maximum and to pay P50,000.00 as civil indemnity for the death of the said victim.

SO ORDERED."

Filed on June 26, 1991, by Assistant City Prosecutor^[2] Mercedes D. Penamora, the Information^[3] indicting appellant of the offense charged, alleges:

"That on or about the 8th day of February 1990, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, did then and there willfully and feloniously, with intent to kill, qualified by evident premeditation and treachery, attack, assault and employ personal violence upon the persons of FEDERICO G. MEDINA and DANILO E. ALMARIO, by then and there shooting them with a handgun, hitting said Federico G. Medina and Danilo E. Almario on the different parts of their bodies, thereby causing serious and mortal wounds which were the direct and immediate cause of their death, to the damage and prejudice of the heirs of the above offended parties, in such an amount as may be awarded to them under the provisions of the Civil

Code.

CONTRARY TO LAW."

With the accused entering a negative plea,^[4] upon arraignment on May 11, 1994, with the assistance of counsel,^[5] trial ensued with the prosecution presenting Arturo Ibarrientos, Faustino Varona, Dr. Dario Gajardo and Dr. Maximo Reyes, as its witnesses.

Synthesized in the Counterstatement of Facts submitted by the Office of the Solicitor General, the People's version runs as follows:

"At about 7:00 p. m. of February 8, 1990, Arturo Ibarrientos, a tricycle driver, was about to park his tricycle along the 'talipapa' (market) in Old Balara, Quezon City. On his way, he saw appellant and Floro Dunayre walk toward the "mahjongan". He noticed that appellant was carrying a gun. He followed appellant. At that time, several persons, including Federico Medina and Danilo Almario, the two unfortunate victims in this case were watching mahjong game. The victims were watching from outside the window. When appellant reached the "mahjongan", he raised his gun and shot Federico at the forehead. Appellant was about one arm length from Federico when he shot him.^[6] xxx

The shooting triggered a fracas among the people present in the "mahjongan". xxx Faustino Varona, one of the 'mahjong' players who saw appellant shoot Federico dropped to the floor and hid under the mahjong table. For his part, Arturo Ibarrientos hid behind a door. Seconds later, three to four consecutive shots were heard. When the shooting stopped, Arturo peeped through the opening of the door to see the outcome of the shooting. He saw appellant and heard him say 'come on pare, he is already dead.' Arturo saw the bodies of Federico and Danilo lying on the ground. Arturo immediately left the place to ask help from the bystanders.^[7] xxx

The body of Federico was brought to the PNP Crime Laboratory, Quezon City for autopsy. Dr. Dario Gajardo, the head of the autopsy team found that Federico suffered two gunshot, one in the head and the other in the left forearm. xxx

Upon the written request of Danilo's wife, xxx Dr. Maximo Reyes conducted the autopsy on the body of Danilo. The autopsy report showed that Danilo suffered four gunshot wounds located at the left side of the back below the scapula, the right forearm, the left thigh and the lower left femur."^[8] xxx

After the prosecution rested, the defense placed on the witness stand Nita Labadia, Aurora Zapanta and the accused Virgilio Borreros, who testified on the theory of the defense, thus:

"Accused-appellant Virgilio Borreros who was a golf caddie from 1988 to 1990, testified that at around 6:00 p. m. of February 8, 1990, he passed by the mahjungan house on his way home from the Capitol City (where

the Capitol Golf Course is located), where he saw Federico G. Medina alias Eric and Danilo Almario. Medina who was his childhood friend, called out to him, so he approached him. He stated that Medina 'prodded me with the rattan stick he was holding' and was about to strike him so he ran away. Medina who was drunk, chased him until the bridge. When he got home, he rested, and at about 7:00 p. m., he went back to the mahjongan to get the golf balls he left behind. He again saw Medina and Almario and was about to retreat when he was seen by them. Medina collared him and he warded off Medina's hands which angered the latter, who cursed him saying: "Putang ina, lalaban ka". He also cursed Medina who then drew his gun. He, however, managed to grab the gun and he moved back, but Medina was attacking him so he shot Medina. Almario, who was at the back of Medina was about to get a *pamalo*, so he shot him at the feet to warn him. Almario, however, faced him with the *pamalo* and attacked him, so he shot him again in the thigh. Almario continued on attacking him, so he shot him again.^[9] xxx

"Borreros further stated that Medina must have harbored ill feelings against him when he rejected the proposition of the latter to sell guns for a commission and was threatened if his proposition is known by other persons.^[10] xxx

"Nita Labadia testified that on February 8, 1990, there was a mahjong session in her house which started at about 2:00 p. m. She knew Federico G. Medina from whom she borrowed money with `5/6 interest' and Danilo Almario who was a `toughie' in their place. Virgilio Borreros, Medina and Almario were kibitzers. She heard Medina and Almario who were armed with a *batuta* annoying Borreros who left. At about past 7:00 p. m. Borreros came back to get the golf balls he left hanging on the side of the wall of her house, but he was accosted by Medina who held him by his shirt. Borreros parried the hand of Medina and the latter drew his gun but Borreros was able to grab the gun. Medina kept on attacking Borreros so the latter shot the former. The foregoing testimony of Labadia materially and substantially corroborated the testimony of Borreros that he was being attacked. xxx She also refuted the testimony of Arturo Ibarrientos that he saw the shooting, and stated that 'Ibarrientos was not there. He was not present at that time'. xxx Labadia further testified that Medina is about the same height as Borreros but stouter, and that she noticed the bulge on the waist of Medina. She added that Almario, who was just behind Medina, and who had a *batuta*, kept on attacking Borreros and that Almario and Medina were both drunk."^[11] xxx

On the basis of the testimonial and documentary evidence on record, the trial court handed down the judgment of conviction above alluded to. Therefrom, the accused appealed to this Court, contending that:

I

THE COURT A QUO ERRED IN NOT CONSIDERING THE JUSTIFYING CIRCUMSTANCE OF SELF DEFENSE IN FAVOR OF ACCUSED-APPELLANT VIRGILIO BORREROS.

II

THE COURT A QUO ERRED IN FINDING THAT TREACHERY ATTENDED THE KILLING OF FEDERICO G. MEDINA.

III

THE COURT A QUO ERRED IN ORDERING ACCUSED-APPELLANT TO PAY P50,000.00 EACH FOR THE DEATH OF VICTIMS FEDERICO G. MEDINA AND DANILO ALMARIO.

After a careful examination of the evidence and study of the records on hand, the Court finds no merit in the appeal.

To begin with, the trial court cannot be faulted for rejecting appellant's theory of self defense. When appellant theorized upon self defense he, in effect, assumed the *onus probandi* to substantiate the same. It became his inescapable burden to prove clearly and convincingly the elements of unlawful aggression on the part of the victim, reasonable necessity of the means employed to prevent or repel the aggression, and lack of sufficient provocation on the part of the person defending himself.^[12]

Appellant failed to discharge said burden. Unlawful aggression, a condition *sine qua non* to a successful invocation of self-defense, was not established.^[13] On the witness stand, appellant narrated that earlier in the day, when the victims met their intimely death, Federico Medina tried to strike him with a "batuta". When he was able to break away, Federico Medina chased him from the "mahjongan" up to the bridge where he eventually escaped. He then went to rest in his house but after an hour, he returned to the "mahjongan" to get the golf balls which he had left. The said version runs counter to human experience and behavior, taking into account the great probability that the victims might still be in the vicinity of the "mahjongan". As aptly elucidated upon by the trial court, it was very unlikely for appellant to leave the safety of his house and to go back to the "mahjongan" to expose himself to the danger awaiting him thereat. In fact, appellant's tale that he went back to the place just to recover some golf balls was contradicted by his own admissions. On direct examination, he testified that while walking towards Federico Medina, the latter jabbed him with a "batuta"^[14], and aimed to strike him with it until he ran away.^[15] His narration of facts and what happened made no mention of the golf balls he supposedly hanged on the wall at the "mahjongan", immediately upon approaching Federico. Then under cross examination, he belatedly stated that he hanged the golf balls when he approached Federico. Under further examination, he confirmed that he did not enter the "mahjong" house at all.^[16]

Then too, according to appellant, he was trying to ward off Federico Medina's hands from his collar, when the latter said "Putang Ina, lalaban ka", to which remark he answered and cursed him back, prompting Federico to go for his gun which was tucked in his waist. But while Federico was about to draw the gun, appellant was able to grab and take possession of the same.^[17] Thereupon, appellant claims to have stepped back about seven (7) feet from Federico Medina.^[18]

From the aforestated facts and circumstances, no unlawful aggression could be