

FIRST DIVISION

[G.R. No. 128754, October 13, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PO3
ERNESTO D. LANGRES, ACCUSED-APPELLANT.**

D E C I S I O N

PUNO, J.:

Appellant **PO3 Ernesto Langres** of the Philippine National Police was convicted by the Regional Trial Court of Dapa, Surigao Del Norte, for the crime of **Murder**. He was sentenced to suffer the penalty of *reclusion perpetua* and to pay the legal heirs of the victim, **Teodorico Sindo, Jr.**, the sum of fifty thousand pesos (P50,000.00) as indemnity, twenty thousand pesos (P20,000.00) for burial expenses and ten thousand pesos (P10,000.00) for moral and exemplary damages. He now seeks his acquittal on the ground that the killing was done in self-defense.

The crime^[1] was allegedly committed as follows:

"That on June 24, 1990, at about 1:10 o'clock early dawn in the poblacion of Dapa, Surigao Del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused in full freedom, intelligence and voluntariness, with no justifiable cause did then and there willfully, unlawfully and feloniously, with the use of a caliber 38 (sic) revolver, assault, attack and shoot TEODORICO V. SINDO, JR. hitting him on the head which caused his instantaneous death, **with qualifying circumstance of superiority**, the accused being armed, to the damage and prejudice of the heirs of the victim, actual and moral, in the amount of P100,000.00." (emphasis supplied)

"CONTRARY TO ARTICLE 248 of the Revised Penal Code."

Upon arraignment, accused pled 'not guilty'. Trial ensued.

The prosecution evidence shows that in the evening of June 23, 1990, the victim, Teodorico Sindo, Jr., his brother, Restituto, and friends Orestes Concilles, Boboy Cubelo and Henry Tiu attended a dance at the municipal gymnasium of Dapa.^[2] The dance ended at about midnight. The victim and his companions walked Tiu to his home. Thereafter, they proceeded to the house of Dondel Sindo, an elder brother of the victim and Restituto.

Dondel's house is situated at the corner of Lopez Jaena and Del Pilar Streets, about 22 kilometers from the house of Jaime Azarcon and 36 meters from the house of Adelindes Clave. The vicinity was illuminated by a light from a lamp post installed at the corner of the streets. It was already 1:00 a.m. of June 24, 1990. The

victim and his companions sat on a bench opposite Dondel's house. They conversed as they watched the Cubelo brothers having a heated argument a few meters away

from them.

After a short while, appellant **PO3 Ernesto Langres** arrived at the scene, followed closely by Pablo Escobal and Ben Sollo.^[3]

Restituto greeted the appellant, saying, "*Maayong gabii, sir*". Without a word, appellant punched Restituto on the lower jaw, causing the latter to tumble to the ground.^[4] Restituto got up and did not say anything. Victim Teodorico, Jr. then approached the appellant and asked the latter what Restituto's fault was.^[5] Appellant took two (2) or three (3) steps backwards, drew his .38 caliber service revolver and aimed it at the victim. The gun's trigger went off, hitting the victim on the forehead.^[6] The victim was lifted a few inches off the ground due to the gunshot's impact. When the victim landed on the ground, he was able to take a few steps before he collapsed.^[7]

Restituto charged towards the appellant upon seeing his brother slump on the ground. Again, appellant aimed the gun at Restituto. Restituto desisted from assaulting the appellant and instead cuddled his brother. Restituto urged the victim to speak. He could not.

Patrolman Jose Inhaynes arrived and pacified the appellant. Shortly thereafter, **Lt. Venias**, a Commanding Officer of the defunct Philippine Constabulary, also came. Appellant surrendered to Lt. Venias. They carried the victim to the service patrol jeep of Lt. Venias. Appellant and Lt. Venias boarded the jeep and brought the victim to Siargao District Hospital.

The victim was declared dead on arrival at the district hospital. His death was due to "cardio-respiratory arrest secondary to massive hemorrhage due to gunshot wound frontal forehead".^[8]

Teodorico Sindo, Sr., father of the victim, declared that he spent some twenty thousand pesos (P20,000.00) for the burial of his son and for other incidental expenses such as the nightly novena and the "*katapusan*".^[9]

The defense had a different version of the shooting incident.

In the evening of June 23, 1990, appellant was a part of the police team tasked to maintain peace and order at the dance being held at the municipal gymnasium in Dapa. At about midnight, a commotion erupted followed by a power failure. The dance was stopped upon the advice of the police.

After everything settled down, appellant decided to go home. Along the way, he heard a woman shouting for help. He headed towards the source of the shouting. He saw a crowd at Lopez Jaena and Del Pilar Streets and learned that the woman shouting for help was the mother of the Cubelo brothers. He noticed a bench, a table and some broken glasses in the vicinity.

Appellant introduced himself as a policeman and investigated. A drunken Restituto pointed a finger at him and said, "So what if you are a policeman." Appellant took a step backward but Restituto kept advancing towards him. He pushed Restituto and warned him, saying, "Do not go near me." Restituto staggered and fell down.

The victim then rushed towards the appellant. Wary of what the victim would do, appellant retreated and drew his gun. He pointed the gun at a 45-degree angle into the air and fired a warning shot. To his surprise, the victim was hit by the gunfire.

When Restituto saw his brother sprawl on the ground, he moved to assault the appellant. Instinctively, appellant aimed his revolver at Restituto. It was then that Pat. Inhaynes arrived at the scene. Appellant returned his revolver to its holster and requested Pat. Inhaynes to help him bring the victim to the hospital. A few minutes later, Lt. Venias came on board a patrol jeep. Appellant voluntarily surrendered to Lt. Venias.

Patrolman Jose Inhaynes testified that he heard a gunfire in the early dawn of June 24, 1990. He rushed to the scene and found the appellant pointing his gun at Restituto who was then embracing his wounded brother, Teodoro, Jr. Inhaynes shouted at appellant, saying, "Erning, don't!" Appellant retreated a bit and put the gun back in its holster. Soon after, Lt. Venias, the Commanding Officer of the Philippine Constabulary, arrived at the scene on board a patrol jeep. Appellant surrendered to Lt. Venias. They boarded the victim inside the jeep and drove him to Siargao District Hospital. Appellant was taken to the police headquarters.^[10]

The trial court found the appellant guilty as charged. The dispositive portion of its Judgment, dated August 27, 1996, reads:

"WHEREFORE, in view of the foregoing, the Court finds PO3 ERNESTO D. LANGRES guilty beyond reasonable doubt of the crime of Murder as defined and penalized under Art. 248 of the Revised Penal Code as amended by Sec. 6, Rep. Act No. 7659. Without any modifying circumstance for consideration, he is sentenced to an imprisonment of an Indeterminate Penalty of RECLUSION PERPETUA or specifically TWENTY-SIX (26) YEARS, EIGHT (8) MONTHS and ONE (1) DAY to THIRTY-THREE (33) YEARS, FOUR (4) MONTHS and ONE (1) DAY, the victim was killed with the qualifying circumstance of 'taking advantage of superior strength.'

"He is likewise ordered to pay the heirs of the victim through the father, Teodorico Sindo, Sr., the following:

- "1. FIFTY THOUSAND (P50,000.00) PESOS as indemnification for the death of said victim;
- "2. TWENTY THOUSAND (P20,000.00) PESOS as reimbursement for burial and other necessary expenses; and
- "3. TEN THOUSAND (P10,000.00) PESOS for moral and exemplary damages;

but without subsidiary imprisonment in case of insolvency, to suffer the accessory penalties imposed by law and to pay the cost.

"The bonds posted for his temporary liberty are CANCELLED, and pertinent papers, if any, shall be returned to the bondsmen.

"SO ORDERED."

Hence, this appeal. Appellant now contends:

"I. THE LOWER COURT ERRED IN IGNORING THE FACT THAT THE (APPELLANT) ACTED IN SELF-DEFENSE AND WITHOUT INTENT TO KILL.

"II. THE LOWER COURT ERRED IN RULING THAT THE QUALIFYING CIRCUMSTANCE OF TAKING ADVANTAGE OF SUPERIOR STRENGTH WAS DULY PROVEN CONVINCINGLY AND SATISFACTORILY BY THE PROSECUTION TO AFFIRM THE CORRECTNESS OF THE MURDER CHARGE.

"III. THE LOWER COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER."

The appealed decision is affirmed with modification.

The elementary rule is when a person admits having killed the victim but invokes self-defense, he assumes the burden of proof to establish his plea of self-defense by credible, clear and convincing evidence.^[11] For self-defense to prosper, it must be shown that there was a **previous unlawful and unprovoked attack** that placed the life of the accused in danger and forced him to inflict more or less severe wounds upon his assailant, employing therefor reasonable means to resist said attack. Thus, three (3) elements must first be established before a person can invoke self-defense, to wit: (1) unlawful aggression, (2) reasonable necessity of the means employed to repel the aggression and (3) lack of sufficient provocation on the part of the person invoking self-defense. **The presence of unlawful aggression is a condition *sine qua non*.** There can be no self-defense to speak of, whether complete or incomplete, unless the victim has committed an unlawful aggression against the person defending himself.^[12]

In the case at bar, the first element of unlawful aggression was not established by the appellant. Four (4) credible witnesses for the prosecution belied appellant's claim that the victim unlawfully assaulted him prior to the shooting incident, thus:

RESTITUTO SINDO^[13]

DIRECT-EXAMINATION

"(FISCAL LAGO)

"Q: On June 24, 1990 at 1:00 o'clock in the morning more or less, where were you?

"A: We were at the gym.

"Q: From the gym, where did you proceed?

"A: We went home together with Mr. Henry Tiu.

"Q: Besides Mr. Henry Tiu, who were your other companions?

"A: Boboy Cubelo, Orestes Concilles, Teodorico Sindo, Jr. and me, Restituto Sindo.

"Q: Where did you go?

"A: We were sitting outside opposite the house of our elder brother.

"Q: Where is the house of your brother located?

"A: At the corner of Del Pilar and Lopez Jaena Streets.

x x x

x x x
x x x

"Q: What were you doing then in that corner street?

"A: We conversed.

"Q: While conversing, what incident happened?

"A: They (sic) arrived, this Pat. Langres.

"Q: **And when Pat. Langres arrived, what happened next?**

"A: **We gave our due respect.**

"Q: **What transpired after you have given him your respect?**

"A: **He boxed me.**

"Q: Who boxed you?

"A: Pat. Ernesto Langres.

"Q: And what happened to you after boxing you?

"A: I fell backward to the ground.

"Q: And what did you do after that?

"A: I rose.

"Q: And after rising, what did you do or say?

"A: **My elder brother inquired as to what wrong has my brother committed.**

"Q: **Who was that elder brother you are referring to?**

"A: **Teodorico Sindo, Jr.**

"Q: **And after Teodorico Sindo, Jr. inquired why Langres boxed you, what happened after that?**

"A: **He drew his weapon.**

"Q: What was that weapon used?

"A: A .38 caliber revolver.

"Q: And what did he do with that weapon?

"A: **He held it with his two (2) hands.**

"Q: **What did Langres do next?**

"A: **When it fired it hit my brother.**

"Q: And after your brother was hit, what happened to your brother?