

## THIRD DIVISION

[ G.R. No. 114904, January 29, 1996 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
DEMETRIO HUBILLA, JR. AND SALVADOR PALLE, ACCUSED-  
APPELLANTS.**

### D E C I S I O N

**DAVIDE, JR., J.:**

Accused-appellants Demetrio Hubilla, Jr. and Salvador Palle, members of the Citizen Armed Force Geographic Unit (CAFGU) based in Sta. Cruz, Casiguran, Sorsogon, appeal from the decision of Branch 53 of the Regional Trial Court (RTC) of Sorsogon<sup>[1]</sup> finding them guilty beyond reasonable doubt of the crime of murder in Criminal Case No. 91-2987 and sentencing them to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim, Antonio Rosas, in the amount of P50,000.00. The accusatory portion of the information under which they were tried reads as follows:

That on or about the 14th day of June, 1991, at barangay Sta. Cruz, municipality of Casiguran, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, each armed with M-14 Rifle, with treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously, attack, assault and shoot one Antonio Rosas thereby inflicting upon the latter mortal wound which directly caused the death of said Antonio Rosas to the damage and prejudice of his legal heirs.

CONTRARY TO LAW.<sup>[2]</sup>

The evidence for the prosecution is summarized by the trial court in this manner:

The witness to the incident, Reynaldo Halcon, testified among others, that at about 3:30 and 4:00 o'clock in the afternoon of June 14, 1991, at Sta. Cruz, Casiguran, Sorsogon, while he and Antonio Rosas were walking along the lower portion of the feeder road on his way home, and Antonio Rosas on his way to work in the field, he heard somebody tell Antonio to lower down his hoe while he was at a distance of about 4 meters from Antonio Rosas; that he hid behind the chinese bamboo and saw the two accused Demetrio Hubilla and Salvador Palle, who were CAFGU members, poking their M-14 rifle to Antonio Rosas; that when

Antonio Rosas did not lower down his hoe, as commanded, he was shot near his feet by Demetrio Hubilla, Jr.; that when Antonio Rosas ran, he was again shot by Demetrio Hubilla, Jr., and this time he was hit and fell down; that Salvador Palle was also poking his rifle to the victim but did not fire a shot; that when he approached the victim, the latter was already dead; that he notified the wife that her husband was already dead.

The widow of the victim, Consuelo Rosas, testified that she was at their house at Sta. Cruz, Casiguran, Sorsogon, on June 14, 1991, at about 3:30 to 4:00 o'clock in the afternoon, when she was informed by Reynaldo Halcon that her husband is already dead; that she immediately went to the place of the incident which is about 50 meters distance and that she found her husband covered with blood and already dead; that he died of a single gunshot wound; that she asked for help and some people went to Casiguran to ask for the help of the police authorities; that they brought the remains of her husband to the Sorsogon Provincial Hospital for autopsy; that Dr. Wilhelmo Abrantes conducted the autopsy and a copy of the autopsy report (Exh. "A") and certificate of death (Exh. "B") were issued; that her husband stayed in wake for four (4) days in their house and that she spent more than P10,000.00; that she felt very sad, considering that she had two minor children, the eldest is 3 years old and the other one is one-half (1/2) month old. On cross-examination she declared that Reynaldo Halcon accompanied her to the place of the incident; that the two accused are residents of the same place, but are staying at the detachment because they are CAGU members; that they are friends of her husband and she does not know why he was shot.

Dr. Wilhelmo Abrantes testified that he conducted the autopsy on the body of Antonio Rosas and prepared the autopsy report (Exh. "A") showing that the cause of death was shock and hemorrhage due to gunshot wounds; that he likewise signed the certificate of death (Exh. "B").<sup>[3]</sup>

The defense had a different version. Appellant Demetrio Hubilla testified that while he and appellant Salvador Palle, a fellow CAGU member, were walking from their detachment on 14 June 1991 at around 2:00 p.m., the victim, Antonio Rosas, suddenly appeared and attacked them with a hoe. Antonio succeeded in hitting Salvador's hands with the hoe, causing the latter to drop his M-14 rifle to the ground. Antonio got the rifle and squeezed its trigger. However, the rifle failed to discharge. Salvador ran away, while Demetrio shouted at Antonio to drop the rifle and then fired a warning shot into the air. Instead, Antonio loaded and cocked the rifle and aimed it at Demetrio. Fearing for his life, Demetrio shot Antonio and subsequently surrendered himself together with Salvador at Camp Escudero.<sup>[4]</sup>

Appellant Salvador Palle testified that at around 4:00 p.m. on the same date, he was walking home with Demetrio Hubilla when Antonio Rosas suddenly struck his rifle with a hoe causing it to fall down. He forthwith fled towards his detachment leaving behind Antonio and Demetrio. As he was running towards his detachment, he heard two shots. He did not know anymore what happened between Demetrio

and Antonio. He proceeded to inform Assistant Commander Realoye that his rifle was wrested from him. It was only much later on that he found out that Antonio sustained injuries.<sup>[5]</sup>

The trial court did not give credence to the appellants' claim of self-defense. It stated thus:

The version of the accused to the effect that they acted in self-defense is unworthy of belief. Here are two CAFGU MEMBERS fully armed with M-14 rifles allegedly defending themselves against the attack of a person with only a hoe as his weapon. Unless out of his mind, or bent on committing suicide, no one in the ordinary course of events, will dare challenge or attack two people fully armed with M-14 rifles with only a hoe as his weapon, and expect to come out alive and in good health.

It was admitted by the accused Demetrio Hubilla, Jr., that he shot the victim causing his instantaneous death while his companion Salvador Palle, and as testified to by Reynaldo Halcon, poked his rifle to the victim without, however, firing a single shot. These individual but simultaneous acts of the two accused had immobilized the victim and ensured his death. Demetrio Hubilla, Jr., and Salvador Palle are conspirators.

A co-conspirator need not fire a shot if he was present and gave moral support to the assailant. (58 SCRA, p. 450).

Records show that Reynaldo Halcon, the only eyewitness for the prosecution, answered questions in a straight-forward manner, relaying with clarity how the incident actually happened. The plea of self-defense by the accused is not sufficient to overthrow the clear testimony of the prosecution's witnesses.

Accused Salvador Palle testified that the victim attacked him with a hoe. This hit his rifle causing it to fall to the ground. Palle then ran away. He testified though, that he did not see the victim pick up the rifle and point it at him. From this testimony, Palle invoked self-defense. This is flimsy and absurd. Being a CAFGU member, he is supposed to be well-versed in handling firearms, as compared to the victim. Besides, both the accused were armed with M-14 rifles while the victim carried only a hoe. Obviously, there was no reasonable necessity of the use of the firearms to repel the aggression by the victim. Hence, the theory of self-defense is incredible.

The burden of proof in self-defense is upon the accused. (133 SCRA p. 82)<sup>[6]</sup>

Accordingly, the trial court disposed as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused DEMETRIO HUBILLA, JR. and SALVADOR PALLE, guilty beyond reasonable doubt of the crime of MURDER they are hereby penalized to undergo RECLUSION PERPETUA with its accessory penalties.

They are likewise ordered to indemnify the heirs of the victim the amount of FIFTY THOUSAND PESOS (P50,000.00) as civil indemnity.

With cost de oficio.

SO ORDERED.<sup>[7]</sup>

The accused-appellants seasonably appealed to us contending that the trial court erred (1) in not appreciating the physical evidence on record that would necessarily uphold their claim of self-defense, and (2) in holding that their claim of self-defense is "incredible" and adopting en toto the version of the prosecution's lone eyewitness.

<sup>[8]</sup> They submit that their claim of self-defense, is supported by hard physical evidence, namely, the autopsy report showing that the victim was facing Hubilla when he was shot contrary to the testimony of prosecution witness Reynaldo Halcon that the victim was shot while he was running away. Moreover, the assault on Demetrio Hubilla was imminent forcing him to shoot the victim.

At the core of the appellants' assignment of errors is the credibility of eyewitness Reynaldo Halcon. We reiterate that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the finding of the trial court, unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.<sup>[9]</sup> This is so because the latter is in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying during the trial. The appellants have failed to convince us that there is room in this appeal for the application of the exception.

Moreover, the appellants have not shown that the lone eyewitness had any ill-motive against them which would have moved him to falsely implicate them in the death of Antonio Rosas. It is settled that where there is nothing to indicate that the principal witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.<sup>[10]</sup>

In any event, since the appellants have interposed self-defense the burden of evidence is shifted to them. It is hornbook doctrine that where the accused admits full responsibility for the killing of the victim but invokes self-defense, it is incumbent upon him to prove by clear and convincing evidence that the killing was justified and that he incurred no liability therefor. As the burden of evidence is shifted to him, he must rely on the strength of his own evidence and not on the weakness of that of the prosecution, for even if the latter were weak, it would not be disbelieved after his open admission of responsibility for the killing.<sup>[11]</sup> Being a weak defense which, like alibi, can easily be concocted, self-defense must be proven with certainty. The following elements must concur: (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.<sup>[12]</sup>

Like the trial court, we too cannot subscribe to the version of the appellants that the victim was the unlawful aggressor. That claim is definitely contrived. Neither the