

[SYLLABUS]

[G.R. Nos. 99259-60, March 29, 1996]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EMILIO SANTOS V DELGADO, ACCUSED-APPELLANT.

D E C I S I O N

FRANCISCO, J.:

The rationale behind the whole concept of mitigating circumstances is to show mercy and some extent of leniency in favor of an accused who has nevertheless shown lesser perversity in the commission of an offense.^[1] Thus, where the evidence on record bespeaks vileness and depravity, no mercy nor leniency should be accorded an accused who should be made to suffer in full for acts perpetrated with complete voluntariness and intent for their tragic consequences.

This is an appeal from the decision of Branch XLIX of the Regional Trial Court of Manila convicting appellant of the crimes of murder and frustrated murder as follows:

"1. In 'People versus Emilio Santos' Criminal Case No. 90-80422, the Court finds the accused guilty beyond reasonable doubt, as principal for (sic) the crime of 'Murder' defined in and penalized by Article 248 of the Revised Penal Code, and there being no other modifying circumstances attendant thereto, hereby metes on the said Accused the penalty of RECLUSION PERPETUA, with all the accessory penalties of the law and hereby condemns him to pay to the heirs of the deceased Valentino Guevarra the amount of P7,500.00 as actual damages and the amount of P50,000.00 as indemnity or moral damages.

"2. In 'People versus Emilio Santos' Criminal Case No. 90-80423, the Court finds the accused guilty beyond reasonable doubt of the crime of 'Frustrated Murder' and there being no other modifying circumstances attendant thereto, hereby imposes on said Accused an indeterminate penalty of from Eight (8) Years and Twenty (20) Days of Prison Mayor, to Twelve (12) Years, Five (5) Months and Eleven (11) Days of Reclusion Temporal and to pay to Francisco Lacsa the total amount of P22,000.00 as actual damages and P25,000.00 as indemnity and moral damages."^[2]

Appellant does not assail his conviction of the crimes aforementioned but assigns as errors in the instant appeal, the failure of the trial court to consider in his favor the ordinary mitigating circumstance of immediate vindication of a grave offense committed against an ascendant and the privileged mitigating circumstance of incomplete defense of a relative.^[3]

As may be culled from the testimony of prosecution witness Francisco Lacsa, the antecedent facts are as follows: At around 6:00 o'clock in the evening of October 22, 1989, Francisco Lacsa was suddenly awakened from his sleep by the arrival of

his close friend and compadre, Valentino Guevarra. Surprised to see Valentino in a torn and bloodstained shirt, Francisco asked him what happened, and the latter replied that earlier, he had a misunderstanding with appellant's father, Emmanuel Santos. Valentino requested Francisco to intervene in settling his dispute with Emmanuel, and Francisco, being a Barangay Tanod and knowing Emmanuel personally, readily acceded. Both Francisco and Valentino proceeded to the house of Emmanuel for the sole purpose of talking to him but were greeted by the latter with a bow and arrow pointed at them. Fearing for their lives, Francisco and Valentino retreated and ran towards the corner of Laong-Laan and Dela Fuente Streets with Emmanuel and his daughter, Elizabeth, in close pursuit. After running a distance of some fifty (50) meters, a tricycle carrying appellant, his brother, Dionisio and two unidentified men overtook them. The said persons alighted from the tricycle and approached Francisco and Valentino. Dionisio who was armed with a jungle bolo attacked Valentino hacking him on the thigh and causing him to fall face down. Thereupon, appellant who was wielding a samurai, lifted the wounded body of Valentino, turned him over and repeatedly stabbed and hacked the latter. The two unidentified men who were armed with ordinary knives also took turns in stabbing Valentino. Meanwhile, Emmanuel had arrived at the scene of the crime and pointed his bow and arrow at Francisco, rendering the latter immobile and unable to stave off the attack on the fallen Valentino. Obviously insatiated with their bloody deed, appellant, Dionisio and their cohorts turned their fury on Francisco. Appellant stabbed and hacked Francisco thereby cutting-off four fingers of the latter's left hand while Dionisio stabbed him on his right shoulder. At this point, Francisco ceased to be fully aware of the attack on him save for the fact that he managed to run towards the nearby Fariñas Transportation Compound where a security guard fired a shot in the air to scare off his assailants. Francisco then proceeded to the house of the Barangay Chairman, Benjie Ranola who brought him to the University of Sto. Tomas (UST) Hospital. While Francisco was fortunate enough to have survived, Valentino died as a consequence of the multiple wounds inflicted upon him.

Two informations were filed against the appellant, one for the murder of Valentino Guevarra and another for the frustrated murder of Francisco Lacsa. The two cases were consolidated and during trial, appellant pleaded not guilty to both charges. He admitted having stabbed Francisco but averred that he acted in self-defense and in order to avenge the earlier assault by Francisco and Valentino on his father.^[4] With respect to the injuries inflicted on Valentino and his consequent death, appellant, however, chose to remain silent.^[5]

To support his defense and claim that the stabbing of Francisco was attended by the mitigating circumstance of immediate vindication of a grave offense against his ascendant, appellant presents the following version of the facts of this case. Appellant claims that early in the evening of October 22, 1989, he learned from his Uncle Indo that a fist fight had taken place between Valentino and Francisco on the one hand and appellant's father, Emmanuel on the other. His Uncle Indo informed him that the fight ensued as a result of the fact that Francisco and Valentino had molested and made fun of Emmanuel who was then engaged in selling balut. Neither Emmanuel nor appellant reported the matter to the Barangay or police authorities, instead, feeling certain that Valentino and Francisco would be going to their house looking for a fight, appellant armed himself with a samurai in anticipation of the duo's attack.

Appellant testified that later at around 7:00 o'clock in the evening, Francisco and Valentino armed with a bladed cane and a knife, respectively, arrived and positioned themselves in front of their house. When Emmanuel stepped out of the door, Valentino immediately stabbed him grazing the right side of his jaw. Francisco likewise assaulted Emmanuel causing him to fall to the ground unconscious. Whereupon appellant, who was in the kitchen of their house, rushed outside to aid his father. He grappled with Francisco for possession of the latter's bladed cane and succeeded. Thereafter, Francisco and Valentino fled towards the corner of Laong-Laan Street with appellant in pursuit.

After a careful and judicious scrutiny of the evidence presented before it, the trial court found more plausible the prosecution's story, and gave full faith and credence to Francisco's testimony. In debunking appellant's theory of self-defense, the lower court ruled that the facts as established by the prosecution completely negated the existence of the elements of self-defense namely, (1) that the accused is not the unlawful aggressor; (2) that there was lack of sufficient provocation on his part; and (3) that he employed reasonable means to prevent or repel the aggression.^[6]

Perhaps realizing the futility of his efforts at exculpating himself from criminal liability, appellant now comes to this court abandoning the theory of self-defense albeit invoking the privileged mitigating circumstance of incomplete defense of a relative.

The law provides that defense of a relative is one of the circumstances that justify the commission of a crime and exculpate the accused from criminal liability provided that the following requisites concur: (1) unlawful aggression; (2) reasonable necessity of the means employed to repel or prevent it; and (3) in case the provocation was given by the person attacked, the one making the defense had no part therein.^[7] In the event that not all of the aforementioned requisites are attendant, the accused shall be entitled to the privileged mitigating circumstance of incomplete defense of a relative pursuant to Article 13 (1) of the Revised Penal Code.^[8] However, this Court has consistently held that for the claim of incomplete defense of a relative to prosper, it is essential to prove the primordial element of unlawful aggression. If there is no unlawful aggression, there would be nothing to prevent or repel. In that event, there could be no defense, complete or incomplete.^[9]

The defense miserably failed to prove unlawful aggression on the part of Francisco and Valentino against appellant's father thereby prompting appellant to act in his defense. Thus, as correctly observed by the trial court:

"The Court found incredible and chimerical the claim of the Accused that Francisco Lacsa armed with a bladed cane (baston) and Valentino Guevarra, armed with a '29 fan knife,' assaulted and attacked Emmanuel Santos as a consequence of which the right side of the jaw of Emmanuel Santos was grazed and the latter fell on the ground unconscious. Indeed when the Accused testified before the Court, the Accused, at the time of the arrival of Francisco Lacsa and Valentino Guevarra, was in the kitchen, in (sic) the second floor of their house. From where he was, the Accused could not see the incident involving his father on one hand, and Francisco Lacsa and Valentino Guevarra on the other."^[10] (Italics supplied)

Furthermore, the testimony of the appellant himself belies the claim that he merely acted to prevent or repel the unlawful aggression that was being committed by Francisco and Valentino against his father. His unequivocal statements in open court lead to the conclusion that assuming arguendo that Francisco and Valentino had indeed attacked appellant's father, this attack had ceased completely by the time the appellant confronted the duo. Otherwise stated, when appellant stabbed and hacked Francisco, there no longer was any unlawful aggression to prevent or repel. Thus:

"ATTY. LACHICA:

Mr. Laxa (sic) further testified that you inflicted upon his person by hacking with a 'samurai' sword his left hand, what could you say to that?

WITNESS:

I hacked him, sir.

ATTY. LACHICA:

Why did you do that?

WITNESS:

Because when they returned back in the evening, he boxed my father, sir.

ATTY. LACHICA:

Was Laxa (sic) alone when he returned?

WITNESS:

They were two, sir.

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ATTY. LACHICA:

When you say returned (sic), where did they return?

WITNESS:

In front of our house, sir.

ATTY. LACHICA:

Where were you at that time when they returned in front of your house?

WITNESS:

I was inside the house, sir.

ATTY. LACHICA (sic):

When my father went down, he was stabbed and then he fell down face up on the ground, sir.

ATTY. LACHICA:

After noticing of what happened to your father, what did you do?

WITNESS:

I defended himself (sic), sir.

ATTY. LACHICA:

And by what did you defend him?

WITNESS:

I was able to get a cane (pamalo), po.

ATTY. LACHICA:

What did you do with that "pamalo"?

WITNESS:

Laxa (sic) and I had a rumble until such time that I was able to get hold of what he was holding, sir.

ATTY. LACHICA:

What was that, that he was holding that you were able to get hold (sic)?