

ELEVENTH DIVISION

[CA-G.R. CR HC No. 06009, April 29, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RODOLFO ADVINCULA Y MONDANO, ACCUSED-APPELLANT.**

LANTION, J.A.C., J.:

THE CASE

This is an appeal from the Decision^[1] dated 17 December 2012 of the Regional Trial Court of Quezon City, Branch 219 (*court a quo*), finding Accused-Appellant Rodolfo Advincula y Mondano (Appellant) GUILTY beyond reasonable doubt of *MURDER* in Criminal Case No. Q-05-136086.

THE FACTUAL ANTECEDENTS

Appellant's indictment stemmed from an Information² dated 8 August 2005, which reads:

xxx

xxx

That on or about the 4th day of August, 2005, in Quezon City, Philippines, the above-named accused, with intent to kill, qualified by evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of REGGIE TAN y ARAÑES, by then and there stabbing him with a bladed weapon hitting him on the different parts of his body, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said offended party.

CONTRARY TO LAW.^[3]

xxx

xxx

When arraigned,^[4] Appellant, assisted by counsel, pleaded "not guilty" to the charge against him. At the Pre-trial Conference on 12 December 2006, no stipulation was entered into between the Prosecution and the Defense.^[5]

Trial ensued thereafter.

The Prosecution presented Rollane Enriquez, friend of Tan who is an eye witness to the crime.

The Prosecution's version as synthesized by the Office of the Solicitor General is as follows:^[6]

"Sometime in the late afternoon of 4 August 2005, the victim, REGGIE TAN, was talking to Joseph delos Santos and Rollane Enriquez in front of the latter's store located inside the University of the Philippines compound. The three were making plans to go to a mall, when suddenly, appellant crept up from behind the victim, put him in a headlock using his left arm and then stabbed the victim at his right side with a kitchen knife using his right hand.

The victim tried to extricate himself from the appellant's grip and was able to run away, but he stumbled. Appellant seized upon the victim's vulnerability while he was on the ground bleeding, and delivered his second knife thrust to the chest. The appellant stabbed the victim a third time before he fled the crime scene.

The victim was brought to the East Avenue Medical Center, but was declared dead on arrival. Post-mortem findings identified three (3) stab wounds, all of which were described as "fatal" independently of each other xxx"

For its part, the Defense presented Appellant himself to prove his theory of self-defense.

The version of the Defense, as summarized by Appellant in his *Brief*^[7] reads:

xxx

RODOLFO ADVINCULA and the late Reggie Tan were neighbors in Dagohoy, U.P. Campus, Quezon City. On August 4, 2005, Rodolfo was in the house with his two (2) other siblings when Reggie Tan, carrying a knife, entered their house to harm his disabled siblings, but when Tan saw him inside, the latter scampered away. He was angry with Reggie Tan and he followed him to the store nearby where he stayed. He grabbed the knife from Reggie's hand and accidentally stabbed the latter. He was then arrested by the barangay officials.^[8]

xxx

On 17 December 2012, the court *a quo* rendered the herein assailed Decision, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered finding the accused Rodolfo Advincula y Mondano GUILTY beyond reasonable doubt of the crime of Murder and is hereby sentenced to suffer the penalty of reclusion perpetua for the death of Reggie Tan y Arañes.

Accused Rodolfo Advincula y Mondano is further adjudged to pay the heirs of Reggie Tan y Arañes, represented by his mother, Teresita A. Tan, the following amounts:

1. Php75,000.00 as civil indemnity;
2. Php50,000.00 as moral damages;
3. Php30,000.00 as exemplary damages;
4. Php67,460.00 as actual damages; and,

5. Php413,070.00 by way of lost earnings, plus costs of suit.

SO ORDERED.”^[9]

Aggrieved, Appellant appealed the assailed Decision raising as error the following:

I

THE TRIAL COURT GRAVELY ERRED IN NOT APPRECIATING THE JUSTIFYING CIRCUMSTANCE OF DEFENSE OF A RELATIVE.

II

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING TREACHERY AND EVIDENT PREMEDITATION.

III

THE TRIAL COURT GRAVELY ERRED IN IMPOSING PHP75,000.00 AS CIVIL INDEMNITY TO THE HEIRS OF THE VICTIM.^[10]

THIS COURT'S RULING

Appellant contends that the court *a quo* gravely erred in rejecting his claim of *defense of relatives*, arguing that he merely acted in defense of his siblings who were about to be attacked by Tan.

The appeal fails.

At the outset, it should be stressed that where an accused admits authorship of the crime but invokes defense of relatives under Article 11, paragraph 2^[11] of the Revised Penal Code, the *onus probandi* shifts to him to prove clearly and convincingly the following elements: (1) there was unlawful aggression on the part of the victim; (2) there was reasonable necessity of the means employed to prevent or repel it; and (3) in case provocation was given by the relatives being attacked, the person making the defense had no part therein.¹² In clearly and convincingly proving these elements, the accused must rely on the strength of his own evidence, for even if the evidence of the Prosecution are weak, it could not be disbelieved after the accused himself admitted authorship of the crime.^[13]

The first element - **unlawful aggression** on the part of the victim - is the most crucial indicator of the presence of defense of relatives which presupposes an actual, sudden, and unexpected attack.^[14] The relatives being defended must have been attacked by actual physical force or with actual use of a weapon.^[15] It is a condition *sine qua non* for defense of relatives, without which said defense has no leg to stand on, even if the two (2) other elements are present.^[16]

In proving Tan's alleged unlawful aggression against Appellant's siblings, Appellant testified:

Q: What was [Reggie Tan] carrying or in his

possession when he visited your house?

A: Knife, Sir.

xxx

Q: Do you know why he visited your house at that time?

A: I do not know, Sir, but he was just trying to scare us.

xxx

Q: So what happened next when Reggie visited your house and he carried a knife with him?

A: When he saw me, he scampered out of our house Sir.

xxx

Q: What confrontation, if any, did you have with [Reggie Tan] at that moment when you saw him at the sala of your house?

A: Nakursunadahan ko po siya. Nothing happened, Sir, but he went out of our house.

xxx

Q: What injury, if any, did your siblings incurred (sic) from Reggie?

A: None, Sir.^[17]

As could be gleaned from the above-cited testimony, Tan did not attack nor cause any physical harm on Appellant's siblings. As a matter of fact, Appellant himself testified that "nothing happened" when Tan allegedly went inside his (Appellant's) house with a knife, except that Tan immediately ran away the moment he saw Appellant. Clearly, there was no unlawful aggression or any act on the part of Tan that could have forced Appellant to defend his siblings and kill Tan.^[18] Thus, We reject Appellant's claim of defense of relatives.

Appellant also argues that the court *a quo* erred in finding that the qualifying circumstances of treachery and evident premeditation attended Tan's killing.

We are not persuaded.

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms which tend directly and specially to ensure its execution.^[19] The essence of treachery is the sudden attack by an aggressor without the slightest provocation on the part of the victim, depriving the latter of