

## NINETEENTH DIVISION

[ CA-G.R. CR NO. 00665, July 31, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN PADILLA Y SALES, ACCUSED-APPELLANT.**

### DECISION

**LAGURA-YAP, J.:**

This appeal of Edwin Padilla y Sales seeks for the reversal and modification of the September 27, 2006 Decision<sup>[1]</sup> rendered by the Regional Trial Court (RTC), Branch 61, Kabankalan City, Negros Occidental convicting him of Homicide in Criminal Case No. 2002-2950.

#### *Factual Antecedents*

Accused Edwin Padilla stands charged of Homicide pursuant to an Information<sup>[2]</sup> dated April 16, 2002, the accusatory portion of which is as follows:

“That on or about January 22, 2002, in the City of Kabankalan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, said accused, with intent to kill, armed with an unlicensed firearm and a bladed weapon, did then and there willfully, unlawfully, and feloniously attack, assault, shoot and hack ISABELO SALES y ENTIERRO, thereby inflicting injuries upon the body of the latter which caused his death.

CONTRARY TO LAW.

On May 14, 2002, the accused was arrested<sup>[3]</sup>.

On July 31, 2002 accused Edwin Padilla was arraigned in the Ilonggo dialect, which he spoke and understood. He, with the assistance of his counsel, entered the plea of “not guilty” to the crime charged.<sup>[4]</sup>

Trial on the merits against accused Edwin Padilla, ensued after the pre-trial conference on November 20, 2002<sup>[5]</sup>.

The accused posted bail for his temporary liberty on March 12, 2004<sup>[6]</sup>.

#### Version of the Prosecution<sup>[7]</sup>

The evidence for the prosecution presented the following witnesses: Dr. Isagani Ayala, Lolita Sales, Lilet Sales.

"The version of the prosecution of the events is as follows: on January 22, 2002 at around 8:00 o'clock in the evening at Sitio Malinog, Brgy. Binicuil, Kabankalan City, Negros Occidental, accused Edwin Padilla shot victim Isabelo Sales who is his first cousin with an improvised shot gun hitting the latter at the left side of his body. Upon being hit, the victim walked towards his house. On reaching his house and seeing him with many wounds at the left portion of his body and full of blood, his wife, Lolita Sales, asked her husband what happened and he told her that the accused shot him. Thereafter, she embraced him and told him to just stay. She then went outside to look for a tricycle and she met Lony Cagvaleno and told him that her husband was shot. When she was about to run to the other house to look for a tricycle, she saw the accused carrying a long firearm called "sumpak" or homemade shotgun going towards their house. On arriving at her house, the accused shot the victim inside through the then open window of her house made of wood or "berha" with no screen. After shooting the victim inside the house, the latter went out of the house and pursued the accused who ran towards his house across the road and in front of the house of the victim. The accused then entered his house which is a compound then surrounded by a fence. Thereafter, the wife of the victim ran towards the house of Vicente Limaco, a former policeman for assistance, and the latter told her that he was already retired Kabankalan Police. Inside the compound where the house of the accused is located, accused attacked the victim who was already lying on the ground and his legs spread apart with a bolo by placing himself on top of the latter saying "you bitch you're fighting back" and hacking him many times especially on the face. The victim died as a consequence.

### Version of the Defense<sup>[8]</sup>

"Accused Edwin Padilla, forty four (44) years old, denies the accusation against him and claims that he killed the victim in self-defense. He testified that the victim is his first cousin, the latter's father and his mother being siblings. Their houses are near each other separated only by a road. He was in the house of Atty. Novero near the rotunda in Brgy. Binicuil at about 8:00 o'clock in the evening of January 22, 2002. He was residing in said house as it was entrusted to his care. He was intending to close its gate at around 8:00 o'clock in the evening but on his way he saw victim Isabelo Sales who was already inside the gate who suddenly without a word or greeting shot him with a short firearm but was not hit as the gun misfired. From inside the gate, persons outside could be seen even if the gate is closed. Upon hearing the click of the trigger, he ran inside the house to get his weapon, an improvised shot gun, he was using in guarding the house and returned after getting the same. The victim followed him inside the house and when he was at the door of the house he continued to pull the trigger of the firearm pointed at him. To defend himself, he fired at the victim who immediately ran and went home. After a while, he followed the victim to their house because the latter had the intention of shooting him. He reached near the window and the latter was visible from where he was then. The victim was doing something with his gun on the table. He intended to shoot the victim but regained control of himself and fired upward and went home but the

victim followed him and entered the yard of their house. He entered their house and got a bolo he was using in cutting wood because he saw the victim carrying a bolo about 2 1/2 feet in length. He went out of the house because he was thinking that the victim would enter and his one month child, nephew, nieces, wife, and father were inside the house. When he was out of the house, the victim hacked but he was able to parry it wounding his hand cutting the bone and injuring his head. He then hacked the victim with his bolo which due to the force of his hacking (his bolo) flew away. Thereafter, he wrestled for the bolo of the victim and he was able to take hold of it and hacked the victim many times. He was brought to the hospital thereafter.

On September 27, 2006, the RTC rendered the assailed Decision, the decretal portion of which reads:

"WHEREFORE, the Court finds accused Edwin Padilla y Sales guilty beyond reasonable doubt of the crime of homicide as charged, and applying the Indeterminate Sentence Law, hereby sentences the said accused to suffer the penalty of imprisonment of eight (8) years, as minimum, to fifteen (15) years, as maximum, to indemnify the heirs of victim Isabelo Sales the amount of P50,000.00 by reason of his death, to pay P50,000.00 by way of actual damages, P50,000.00 by way of moral damages, P1,120,000.00 by way of loss of income and the costs.

SO ORDERED."

On October 12, 2006, the accused filed a Motion for Reconsideration<sup>[9]</sup>. Subsequently, on October 18, 2006, the prosecution filed an Opposition to Accused's Motion for Reconsideration<sup>[10]</sup>.

On October 26, 2006, the RTC issued an Order<sup>[11]</sup> denying the Motion for Reconsideration.

On November 3, 2006, the accused filed his Notice of Appeal<sup>[12]</sup>. Upon order of the lower court, he posted additional bail in the amount of Five Thousand Pesos P5,000.00 on September 29, 2006 for his provisional liberty during the pendency of his appeal.

### **ASSIGNMENT OF ERRORS**

The following are the errors assigned by the accused-appellant in his Appellant's Brief:

THE LOWER COURT ERRED IN FAILING TO APPRECIATE UNLAWFUL AGGRESSION ON THE PART OF THE DECEASED;

THE LOWER COURT ERRED IN FAILING TO CONSIDER THE REASONABLE NECESSITY OF THE MEANS EMPLOYED BY THE ACCUSED TO PREVENT OR REPEL THE AGGRESSION OF THE DECEASED;

THE LOWER COURT ERRED IN FAILING TO SEE THAT THERE WAS LACK OF PROVOCATION ON THE PART OF THE ACCUSED FROM THE VERY

INCEPTION OF THE INCIDENT;

THE LOWER COURT ERRED IN FAILING TO CONSIDER THE MITIGATING CIRCUMSTANCE OF HAVING ACTED UPON AN IMPULSE SO POWERFUL AS NATURALLY TO HAVE PRODUCED PASSION OR OBFUSCATION STATED IN ARTICLE 13 (6) OF THE REVISED PENAL CODE;

THE LOWER COURT ERRED IN CONCLUDING THAT ACCUSED ESCAPED;  
AND

THE LOWER COURT ERRED IN IMPOSING THE PENALTY WHICH IS NOT COMMENSURATE TO THE WRONG DONE.

The accused-appellant submits in his Brief that he should be acquitted on ground of self-defense claiming that the court *a quo* failed to consider the unlawful aggression on the part of the victim and to consider the reasonable necessity of the means he employed to prevent or repel the aggression of the victim.

The Solicitor General posits in his Brief:

I.

APPELLANT'S PLEA OF SELF-DEFENSE MUST FAIL.

II.

THE AWARD OF DAMAGES UNDER THE CIRCUMSTANCES SHOULD BE MODIFIED.

### **OUR RULING**

We affirm the conviction of the accused-appellant.

Accused-appellant admits having killed the victim Isabelo but asserts that he did so in self-defense.

It is a well settled rule that when an accused admits killing the victim but invokes self-defense to escape criminal liability, the accused assumes the burden to establish his plea by credible, clear and convincing evidence; otherwise conviction would follow from his admission that he killed the victim<sup>[13]</sup>.

### **What are the elements of self-defense?**

In order for self-defense to be appreciated, the accused must prove by clear and convincing evidence the following elements: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself.<sup>[14]</sup> Of the three elements, unlawful aggression by the victim is the condition *sine qua non* in self-defense. As oft-repeated by the Supreme Court, self-defense cannot exist without unlawful aggression since there is no attack that the accused will have to prevent or repel.<sup>[15]</sup> If no unlawful aggression is proved, then no self-defense maybe successfully pleaded<sup>[16]</sup>. By invoking self- defense, the burden is placed on

the accused to prove its elements clearly and convincingly. While all three elements must concur, self-defense relies first and foremost on proof of unlawful aggression on the part of the victim. If no unlawful aggression is proved, no self-defense may be successfully pleaded<sup>[17]</sup>.

Here in the instant appealed case, the essential element of unlawful aggression is absent.

One. Based on the account of Lolita Sales (wife of the victim), it was accused-appellant who shot the victim. Lolita in particular testified that her husband (victim) arrived in their house, wounded and when she asked him, he told her that Edwin Padilla (accused-appellant) shot him<sup>[18]</sup>. When Lolita went out to look for a tricycle, she saw the accused-appellant going to their (Lolita) house, carrying a long firearm called "sumpak", a homemade gun. Accused-appellant then shot her husband through an open window<sup>[19]</sup>. The Anatomical Sketch<sup>[20]</sup> confirms the presence of a gunshot wound (with gun pellets) on the left upper arm of the victim. These circumstances, to Our view, would render doubtful accused-appellant's claim that the victim was the unlawful aggressor because it was he (accused-appellant) who shot the latter.

For want of the requisites of a dying declaration, this statement made by the victim to his wife maybe considered as part of *res gestae*. A declaration is deemed part of the *res gestae* and admissible in evidence as an exception to the hearsay rule, when the following concur: 1) the principal act, the *res gestae* is a startling occurrence; 2) the statements were made before the declarant had time to contrive or devise and 3) the statements concerned the occurrence in question and its immediately attending circumstances<sup>[21]</sup>.

All the requisites of *res gestae* declaration are present in this case. There was a startling occurrence, *i.e.*, the shooting. Immediately after, while the victim was still under the exciting influence of the startling occurrence, he uttered the statement as to who had shot him, without any prior opportunity to contrive a story implicating the accused-appellant. Reverting to the issue at hand, We can deduce that the shooting by accused-appellant of the victim negates his claim that the latter was the unlawful aggressor.

Two. We agree with the lower court's findings that accused-appellant intended to kill the victim, although We differ with its inference that the latter had shot the former with a handgun. Save from the self-serving statement of accused-appellant, there is no evidence to show the victim had a handgun. From what Lolita saw, it was accused-appellant who was carrying a firearm, which she described as a "sumpak" or a homemade shotgun<sup>[22]</sup>. Accused-appellant himself admitted to such fact that he had an improvised shotgun. Continuing with the account of the victim's wife, (Lolita), We gather that the victim went out of his house after accused-appellant fired at him through the window. The victim followed accused-appellant who ran across the road, to his house. This is were Lilet (victim's daughter) saw accused-appellant hacked her father. She said, "My father was lying down, he was on top of him with his legs spread apart and he was hacking the face of my father."<sup>[23]</sup> She further said, "Yes, sir, when he was riding on top of my father he was saying (")your bitch, your fighting back(")".<sup>[24]</sup> With Lilet's testimony, We are all the more