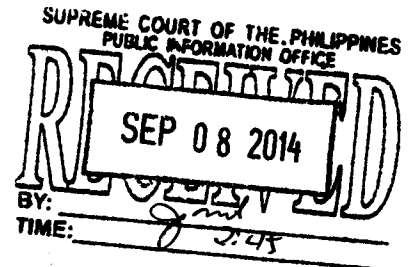




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **July 28, 2014** which reads as follows:*

“G.R. No. 192182 – PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. RUSTICO DELIGERO y PADILLA, Accused-Appellant.

The accused seeks the review and reversal of the decision promulgated on November 20, 2009,¹ whereby the Court of Appeals (CA) affirmed the judgment rendered on July 20, 2005 by the Regional Trial Court (RTC), Branch 4, in Butuan City convicting him of murder for the killing of Joseph Soriano y Pitol (Joseph).²

Antecedents

The Prosecution showed that on September 15, 2002, Joseph was arranging monobloc chairs in the house of his mother-in-law in Arujville Subdivision, Libertad, Butuan City; that while he was lifting a chair, the accused suddenly appeared, shunted the chair away and, without uttering any word, lunged at Joseph with a knife, hitting the latter in the chest; that Joseph held the knife with his left hand but the accused retracted it and thrust it anew, hitting Joseph in the abdomen; that Joseph, already weak, ran towards his trisicad where his wife and their two children were waiting; that Joseph managed to drive his trisicad a short distance only because the trisicad almost overturned; that Joseph’s wife then shouted for help, and the people who responded to her shout brought Joseph to the hospital where he expired; that police officers searched the vicinity of the incident to look for the accused; that accused’s mother was reluctant to inform the police officers of her son’s whereabouts; that the police officers continued the search until they came upon a disturbed patch of grass about 25-30 meters

¹ *Rollo*, pp. 3-15; penned by Associate Justice Danton Q. Bueser, and concurred in by Associate Justice Romulo V. Borja and Associate Justice Elihu A. Ybañez.

² *CA rollo*, pp. 34-55.

from the rear of the house; that the accused, who appeared to be under the influence of liquor, came out from his hiding place in the grassy area after the police officers called for him to surrender to avoid getting harmed; and that the police officers recovered the knife used by the accused in stabbing Joseph from the grassy area exactly where the accused indicated it to be.³

According to Autopsy Report No. 02-41, Joseph had sustained three wounds on the left-side of his chest, abdomen and left palm. The wound on the chest was the fatal one because the knife had incised his heart.⁴

The accused admitted having stabbed Joseph but claimed that he had done so in self-defense. He recalled that on September 15, 2002, the date of the commission of the stabbing, his family and relatives, including Joseph who was his brother-in-law, had a picnic on the beach; that after partaking of the food and drinks at the picnic, Joseph had left ahead of the others; that the accused had later on gone to his mother's house, and found Joseph loading the chairs into his triscad; that he approached Joseph to ask why he had left him at the beach, but Joseph had snapped back at him and suddenly held him by the hand; that seeing that Joseph was armed with a knife, he had parried the blow and wrested the knife from Joseph; that he had then turned the knife at Joseph and hit him in the process; that Joseph had then run away and boarded the triscad parked about 40 meters from the house; and that the accused had later on voluntarily gone with the arresting police officer.⁵

Decision of the RTC

On July 20, 2005, after trial, the RTC rendered its decision finding the accused guilty of murder as charged, disposing as follows:

WHEREFORE, premises considered, accused Rustico Deligero y Padilla is found guilty beyond reasonable doubt of the crime of Murder, is hereby sentenced to suffer the penalty of *reclusion perpetua* with accessory penalties provided by law and to indemnify the Heirs of Joseph Soriano y Potol as civil damages:

- a. The sum of ₱50,000.00 as death indemnity;
- b. The sum of ₱50,000.00 as moral damages;
- c. The sum of ₱25,000.00 as exemplary damages; and
- d. The sum of ₱25,000.00 as attorney's fees;

³ Rollo, pp. 6-7

⁴ Id. at 7.

⁵ Id. at 7-8.

Accused shall serve his sentence at the Davao Prison and Penal Farm at Sto. Tomas Davao del Norte and he shall be entitled to the full benefits of his preventive imprisonment from September 18, 2002 until his sentence has become final conformably with Art. 29 of the Revised Penal Code, as amended.

The hunting knife used in the commission of the offense is ordered confiscated and forfeited in favor of the government to be dealt with as the law provides.

SO ORDERED.⁶

Judgment of the CA

On appeal, the CA affirmed the conviction of the accused through its judgment promulgated on November 20, 2009, *viz*:

WHEREFORE, premises considered, the Judgment of the Regional Trial Court (RTC), 10th Judicial Region, Branch 4, Butuan City, in Criminal Case No. 9591 for Murder, finding Rustico Deligero y Padilla guilty beyond reasonable doubt of Murder is hereby **AFFIRMED**.

SO ORDERED.⁷

Ruling

The appeal lacks merit.

Time and again, this Court has said that in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances that would alter a conviction, it generally defers to the trial court's evaluation of the credibility of witnesses especially if such findings are affirmed by the CA. This is so because the trial judge was in the better position to determine the credibility of the witnesses and other evidence, having heard them testify and observed firsthand their deportment and manner of testifying under grueling examination.⁸ Under the factual circumstances herein, the Court sees no need to depart from the foregoing course of action.

The accused invoked self-defense. For such defense to succeed, he must show by sufficient, satisfactory and convincing evidence that: (a) Joseph had committed unlawful aggression amounting to an actual or imminent threat to his life and limb; (b) there was reasonable necessity in

⁶ CA rollo, p. 55.

⁷ Rollo, p. 15.

⁸ *People v. Malicdem*, G.R. No. 184601, November 12, 2012, 685 SCRA 193, 201.

the means he employed to prevent or repel the unlawful aggression of Joseph; and (c) there was lack of sufficient provocation on his part or, at least, any provocation executed by him was not the proximate and immediate cause of Joseph's aggression.⁹

Unlawful aggression, as the first element of self-defense, is indispensable.¹⁰ For unlawful aggression to be present, the accused must show the concurrence of three conditions, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful. We elucidated on these conditions for unlawful aggression in *People v. Nugas*:¹¹

Unlawful aggression on the part of the victim is the primordial element of the justifying circumstance of self-defense. Without unlawful aggression, there can be no justified killing in defense of oneself. The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat. Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful.

Unlawful aggression is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot.

It is clear that the accused did not discharge his burden to establish by sufficient and satisfactory proof any unlawful aggression by Joseph. On the contrary, Joseph did not at all exhibit any act of aggression towards the accused, but was instead completely unaware of the accused and his

⁹ *People v. Tagana*, G.R. No. 133027, March 4, 2004, 424 SCRA 620, 634-635.

¹⁰ *United States v. Carrero*, 9 Phil. 544, 546 (1908), ("Unlawful aggression is the main and most essential element to support the theory of self-defense and the complete or incomplete exemption from criminal liability; without such primal requisite it is not possible to maintain that a person acted in self-defense within the terms under which unlawful aggression is subordinate to the other two conditions named in article 8, No. 4, of the Penal Code. x x x.")

¹¹ G.R. No. 172606, November 23, 2011, 661 SCRA 159, 167-168.

impending deadly attack. In its assailed judgment, the CA debunked the insistence of the accused on self-defense, and fully explained that the accused had attacked Joseph in a treacherous manner, *viz*:

Appellant admitted that he killed the victim, albeit in self-defense. Well-entrenched in our jurisprudence is the rule that where an accused admits having killed the victim but invokes self-defense to escape criminal liability, he assumes the burden of proof to establish his plea of self-defense by clear, credible and convincing evidence. In interposing self-defense, appellant must clearly and convincingly prove: (1) unlawful aggression on the part of the victim; (2) the reasonable necessity of the means employed to prevent or repel the attack; and, (3) the person defending himself must not have provoked the victim into committing the act of aggression. Without these elements, there can be no self-defense, complete or incomplete.

Unlawful aggression is a condition *sine qua non* for upholding the justifying circumstance of self-defense. Unless the victim has committed unlawful aggression against the other, there can be no self-defense, complete or incomplete, on the part of the latter. If there is nothing to prevent or repel, the other two requisites of self-defense will have no basis. Simply put, unlawful aggression is indispensable, it being the main ingredient of self-defense. The following circumstances negate unlawful aggression on the part of Joseph and/or belies appellant's claim of self-defense.

First. As adequately established by the prosecution, Joseph was lifting a chair when appellant suddenly appeared, warded off the chair carried by Joseph and stabbed the latter on the chest.

Second. As aptly pointed out by the trial court, appellant was harboring an ill feeling against the victim for having been left behind at the beach. In fact, according to appellant upon arriving at his mother's house at Arujville subdivision, Libertad, Butuan City and seeing Joseph arranging the benches, he readily confronted Joseph why he left him at the beach.

Third. Joseph suffered fatal wounds which caused his death. The location of the wounds and the force employed in inflicting those wounds belies appellant's claim of self-defense. They demonstrate a criminal intent to end the life of the victim.

Fourth. Appellant went hiding after he stabbed Joseph and threw at the grassy portion the knife he used to stab Joseph.

Lastly. Appellant upon surrender to the authorities, failed to inform the policemen that he acted in self-defense because Joseph, being the unlawful aggressor, unceremoniously attacked him in the house of his mother.

x x x x

- over -

Appellant finally contends that treachery as qualifying circumstance must be proved as convincingly as the crime itself. Where no particulars were shown as to the manner the aggression was made or how the act resulting to the death of the victim began and developed, treachery is negated.

We disagree.

Treachery is present when these conditions concur: (1) the means, methods and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and (2) such means, methods and forms of execution were deliberately and consciously adopted by the accused without danger to his person. x x x.

In the case at bar, the first requisite is present. There is no question that the means of execution employed by appellant was such that the victim, Joseph had no opportunity to defend himself or to retaliate.

It may be recalled that Joseph was carrying a chair when suddenly appellant approached the former, parried the chair Joseph was carrying and stabbed him. Indeed, Joseph was unsuspecting that appellant would stab him. The suddenness of appellant's attack, coupled with the fact that Joseph was unarmed, left him no means to defend himself.

x x x x

As regards, the second requisite, the following facts lead us to no other conclusion than that appellant consciously adopted a mode which would ensure the realization of his purpose without danger to himself.

Appellant was armed with a knife while Joseph was unarmed; he suddenly approached and stabbed Joseph while the latter was carrying a chair, unsuspecting that he will be stabbed by appellant; appellant was angered by the fact that he was left behind at the beach located at Masao, Butuan City; even as Joseph was defenseless, being unarmed and had no inkling that he will be stabbed, appellant doubtlessly inflicted three (3) wounds to Joseph, two (2) of which were fatal, to ensure the latter's death. Evidently, the manner, in which Joseph was killed, with no provocation on his part and while he was carrying a chair, clearly shows that appellant consciously and deliberately adopted the particular method or form of attack to insure the accomplishment of his purpose.¹²

The accused claimed the benefit of the mitigating circumstance of voluntary surrender, but the lower courts rejected his claim. Their rejection was warranted. For voluntary surrender to be appreciated, he must show that: (a) he had not been actually arrested; (b) he surrendered himself to a person in authority or the latter's agent; and (c) the surrender was voluntary.¹³ Based on the records, however, it is clear that he did not surrender spontaneously as to manifest his intent to unconditionally submit

¹² *Rollo*, pp. 9-13.

¹³ *People v. Ignacio*, G.R. No. 134568, February 10, 2000, 325 SCRA 375, 384.

himself to the authorities, either because he acknowledged his guilt or he wished to save the authorities the trouble and expense necessary for his search and capture.¹⁴ Rather, his surrender was forced, and came at a point during the intensive search for him by the responding policemen when he finally realized that he could no longer avoid or evade arrest by force.¹⁵

The CA properly affirmed the RTC's imposition of *reclusion perpetua*.

To conform to jurisprudence,¹⁶ the Court raises the amounts fixed for death indemnity and moral damages to ₱75,000.00 each, and for exemplary damages to ₱30,000.00. For purposes of granting the exemplary damages pursuant to Article 2230 of the *Civil Code* due to the attendance of an aggravating circumstance, the aggravating circumstance could be a qualifying or attendant circumstance like treachery, for, as the Court has fittingly explained in *People v. Catubig*:¹⁷

The term "aggravating circumstances" used by the Civil Code, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the *Civil Code*.¹⁸

In addition, interest at the legal rate of 6% *per annum* is imposed on all items of civil liability in conformity with current judicial policy,¹⁹ to be reckoned from the finality of this decision until its full payment.

¹⁴ Id.

¹⁵ CA rollo, pp. 46-50.

¹⁶ *People v. Malicdem*, *supra*, note 8 at 206-207.

¹⁷ G.R. No. 137842, August 23, 2001, 363 SCRA 621.

¹⁸ Id. at 635.

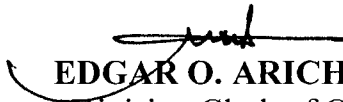
¹⁹ *Sison v. People*, G.R. No. 187229, February 22, 2012, 666 SCRA 645, 667.

The amount of ₱25,000.00 allowed as attorney’s fees is not disturbed considering that the accused did not appeal the award.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on November 20, 2009 by the Court of Appeals subject to the following **MODIFICATIONS**, specifically: (a) the amounts awarded to the Heirs of the late Joseph Soriano y Potol as death indemnity and moral damages shall each be ₱75,000.00; (b) the amount of exemplary damages shall be ₱30,000.00; (c) the grant of ₱25,000.00 as attorney’s fees shall stand; (d) each of the items of civil liability, except that for attorney’s fees, shall earn legal interest of 6% *per annum* from the date of finality of this decision until full payment; and (e) the accused shall pay the costs of suit.

SO ORDERED.”

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court ^{of the} ~~of the~~ ¹⁸²
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The Solicitor General (x)
Makati City

Court of Appeals
9000 Cagayan de Oro City
(CA-G.R. CR H.C. No. 00140-MIN)

The Superintendent
Davao Prison and Penal Farm
Dujali, Davao del Norte

The Hon. Presiding Judge
Regional Trial Court, Br. 4
8600 Butuan City
(Crim. Case No. 9591)

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PUBLIC ATTORNEY’S OFFICE
Counsel for Accused-Appellant
Special and Appealed Cases Division
9000 Cagayan de Oro City

Judgment Division (x)
Supreme Court

Mr. Rustico P. Deligero
Accused-Appellant
c/o The Superintendent
Davao Prison and Penal Farm
Dujali, Davao del Norte

SR

