



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, 2020 which reads as follows:

“G.R. No. 225233 (*Rodolfo Gallardo v. People of the Philippines*)

This petition for review on *certiorari*¹ assails the Decision² of the Court of Appeals (CA) in CA-G.R. CR No. 34309 dated July 8, 2015, affirming with modification petitioner Rodolfo Gallardo’s conviction for homicide.

The Facts

In an Information³ dated March 19, 2010, petitioner was charged with homicide, thus:

That on or about 9:20 o’clock on the night of January 17, 2010 at Brgy. Lanao, in the municipality of Bangui, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab with the use of a Batangas knife DOMINADOR SALINAS inflicting in the process a Stab Wound – Left Anterior Chest, Nipple Line 1 ½ inch wide, 3 inches deep; Lacerated wound – Left Eyebrow; and Avulsed Wound – Right Foot big toe, which directly caused the death of said DOMINADOR SALINAS.

CONTRARY TO LAW.⁴

- over – nine (9) pages ...

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¹ *Rollo*, pp. 12-20.

² Penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino; *rollo*, pp. 27-38.

³ *Rollo*, pp. 28-29.

⁴ *Id.*

On arraignment, petitioner pleaded not guilty.⁵ He admitted that he killed Dominador but claimed that it was in self-defense.⁶ Reverse trial followed.

Petitioner Rodolfo Gallardo, his nephew Wendel Cadang (Wendel), and Elmer Carnate (Elmer) testified for the defense.⁷ On the other hand, Carlo Gene Galicinao (Carlo), the victim's nephew, testified as lone witness for the prosecution.⁸

Defense's Version

Around 9 o'clock in the evening of January 17, 2010, Dominador Salinas (Dominador) attended a wake in Brgy. Lanao, Bangui, Ilocos Norte. He was drinking with some friends in the yard when petitioner, together with Wendel and Elmer arrived. At that time, petitioner was already inebriated. Perfecto Butac (Perfecto), Dominador's brother-in-law, tried to take petitioner outside, but petitioner would not budge. Dominador then forcibly pulled petitioner out of his seat, locked his left arm around the latter's neck and dragged him out of the yard.⁹

Elmer tried to pacify Dominador, but the latter just pushed him away. Petitioner walked away but Dominador followed and attempted to box him. Petitioner then pulled a fan knife from his back pocket and stabbed Dominador in his left chest.¹⁰

Dominador was immediately brought to the hospital but was declared dead on arrival due to cardio-respiratory arrest, secondary to the stab wound in the left anterior chest, three (3) inches deep.¹¹

Petitioner voluntarily surrendered to the Philippine National Police (PNP) – Bangui and turned over the weapon used.¹²

Prosecution's Version

Eyewitness Carlo testified that at around 9 o'clock in the evening of January 17, 2010, he was attending a wake with his uncles,

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⁵ *Id.* at 29.

⁶ *Id.* at 50.

⁷ *Id.* at 68.

⁸ *Id.*

⁹ *Id.* at 28.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 14.

Dominador and Perfecto. They were drinking when petitioner arrived. His uncles wanted petitioner to go home because he was already very drunk. Petitioner refused so Dominador dragged him out of the yard. Dominador lost his grip on petitioner and the latter pulled out his fan knife and stabbed him in his left breast. He rushed Dominador to the hospital, where the latter was declared dead on arrival.¹³

The Trial Court's Ruling

Under Decision¹⁴ dated June 23, 2011, the trial court found petitioner guilty as charged, thus:

WHEREFORE, accused is held GUILTY of HOMICIDE and sentenced to six (6) years and one (1) day of prison mayor minimum, as minimum, to twelve (12) years, and (1) day of reclusion temporal minimum, as maximum. He shall also pay the heirs of the victim the amounts of ₱50,000[.00] as civil indemnity and ₱60,000.00 as actual damages, consistent with prevailing jurisprudence.

SO ORDERED.¹⁵

The trial court held that petitioner admitted to killing Dominador when he invoked self-defense. But to justify the killing, petitioner had the burden of proving through clear and convincing evidence the justifying circumstance of self-defense. This petitioner failed to do. The trial court found that there was no unlawful aggression on the part of Dominador that would have necessitated the need to kill him. More, the means employed by petitioner were glaringly disproportionate to the perceived unlawful aggression.¹⁶

The Proceedings Before the CA

On appeal, petitioner alleged that the trial court erred in not appreciating self-defense in his favor. Dragging a person by the neck amounts to unlawful aggression. The fact that Dominador is bigger than him instilled in petitioner a well-founded belief that his life was in imminent danger. He was thus forced to use his knife, which was the only available means of defending himself at that time.¹⁷

For its part, the Office of the Solicitor General (OSG) averred that petitioner failed to prove the justifying circumstance of self-defense. Dominador's attempt to box him cannot be considered as

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¹³ *Id.* at 53.

¹⁴ Penned by Presiding Judge Rosemarie V. Ramos; *rollo*, pp. 55-64.

¹⁵ *Rollo*, p. 64.

¹⁶ *Id.* at 60-64.

¹⁷ *Id.* at 30.

actual or real peril to petitioner's life or personal safety. He even admitted he was able to parry the punches, thus, there was no alleged threat to his life that would have justified the killing of Dominador. More, his use of a knife was grossly disproportionate to avert the supposed aggression. Considering the victim was only using his bare fists, petitioner's act of stabbing him and inflicting a wound in a vital part of his body was unreasonable, nay, unnecessary.¹⁸

The CA's Ruling

In its assailed Decision¹⁹ dated July 8, 2015, the CA affirmed with modification, thus:

WHEREFORE, the Decision of the Regional Trial Court, Branch 19, of Bangui, Ilocos Norte is **AFFIRMED** with **MODIFICATIONS**, as follows:

1. Accused-Appellant Rodolfo Gallardo is found **GUILTY BEYOND REASONABLE DOUBT** of homicide and sentenced to suffer the penalty of six (6) months of *Arresto Mayor* as minimum to two (2) years and four (4) months of *Prision Correccional* as maximum, in view of the presence of the privileged mitigating circumstance of incomplete self-defense and the generic mitigating circumstance of voluntary surrender.
2. Accused-Appellant Rodolfo Gallardo is likewise ordered to pay to the heirs of Dominador Salinas moral damages in the amount of ₱50,000.00, in addition to the civil indemnity granted by the RTC. The amount of actual damages in the amount of ₱60,000.00, however, shall be reduced to ₱50,000.00 to conform to evidence.

SO ORDERED.²⁰

The CA found that the circumstances convincingly and satisfactorily showed that the victim initiated unlawful aggression against Rodolfo. The three (3) eyewitnesses, *i.e.*, Elmer, Wendel, and Carlo, unanimously testified that prior to the stabbing, Dominador dragged petitioner by the neck from the yard toward the street. On cross, Elmer unequivocally declared that Dominador threw a punch on

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¹⁸ Brief for the Plaintiff-Appellee; *rollo*, pp. 67-81.

¹⁹ Penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Mariflor P. Punzalan-Castillo and Florito S. Macalino; *rollo*, pp. 27-38.

²⁰ *Rollo*, pp. 37-38.

petitioner even after the latter already tried to walk away. This was corroborated by Wendel's testimony. The said acts described by the witnesses proved that there was an actual, physical assault and unlawful aggression against petitioner initiated by Dominador.²¹

The CA, however, maintained that resort to a knife, a deadly weapon, was not warranted under the circumstance.²²

In light of the mitigating circumstance of voluntary surrender and the presence of the privileged mitigating circumstance of incomplete self-defense under Article 69 of the Revised Penal Code²³, the CA modified the penalty and sentenced petitioner to suffer imprisonment of six (6) months of *arresto mayor* as minimum to two (2) years and four (4) months of *prision correccional* as maximum.

As for the monetary awards, the CA affirmed the award of ₱50,000.00 as civil indemnity. The CA awarded moral damages amounting to ₱50,000.00 in light of prevailing jurisprudence. As for actual damages, considering the prosecution merely proved the amount of ₱50,000.00 by means of official receipts, the actual damages awarded were reduced to the said amount.²⁴

The Present Petition

Petitioner now seeks a verdict of acquittal anew. He maintains that he ought to be credited with the justifying circumstance of self-defense.

The OSG, on the other hand, posits that the petition raises questions of fact. The CA correctly affirmed the trial court's findings that the use of a knife was not reasonably necessary to repel the aggression from Dominador. Accordingly, petitioner was unable to establish the justifying circumstance of self-defense by clear and convincing evidence.²⁵

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²¹ *Id.* at 31-33.

²² *Id.* at 34-35.

²³ Article 69. *Penalty to be imposed when the crime committed is not wholly excusable.* – A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of the lack of some of the conditions required to justify the same or to exempt from criminal liability in the several cases mentioned in Articles 11 and 12, provided that the majority of such conditions be present. The courts shall impose the penalty in the period which may be deemed proper, in view of the number and nature of the conditions of exemption present or lacking.

²⁴ *Rollo*, p. 37.

²⁵ Comment; *rollo*, pp. 112-123.

Issue

Did the CA err in affirming petitioner's conviction for homicide?

Ruling

Petitioner avers that the trial court and the CA erred in not appreciating in his favor the justifying circumstance of self-defense. The act of dragging a person by the neck and repeatedly punching him amounts to unlawful aggression. He was thus constrained to defend himself using his knife, which was the only means available to him at that time. He did nothing to provoke the attack.²⁶

Notably, when an accused invokes self-defense to escape criminal liability, it is incumbent upon him or her to prove by clear and convincing evidence that the killing was justified under the prevailing circumstances in order to avoid criminal liability.²⁷

The essential requisites of self-defense are as follows: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense.²⁸ Unlawful aggression is the condition *sine qua non* of self-defense. If no unlawful aggression attributed to the victim is established, self-defense is unavailing for there is nothing to repel.²⁹

Here, there was evidence of unlawful aggression by the victim. Records show that Dominador continuously assaulted petitioner by dragging him by the neck and throwing punches at him. Such physical violence continued until petitioner stabbed him in the chest. Clearly, there was indeed an actual physical attack on petitioner. The first element of self-defense was thus established.

Records likewise indicate lack of sufficient provocation on the part of petitioner. There was no evidence showing that he acted in a manner that could have incited Dominador into launching an assault. Other than the fact that he appeared intoxicated, he was not behaving in any manner that would warrant the violence inflicted upon him by Dominador. Certainly, there was no proof that he needed to be forcefully removed from the yard, dragged by the neck, and punched repeatedly.

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²⁶ *Rollo*, p. 30.

²⁷ *People v. Doca*, G.R. No. 233479, October 16, 2019.

²⁸ *People v. Panerio, et al.*, G.R. No. 205440, January 15, 2018.

²⁹ *People v. Duran*, 820 Phil. 1049, 1057 (2017).

Nevertheless, the prosecution's evidence was insufficient to establish the reasonable necessity of the means to repel the unlawful attack. Both the trial court and the CA ruled that petitioner's use of a knife was not reasonably necessary to repel or prevent Dominador's unlawful aggression. We agree.

In *People v. Obordo*,³⁰ the Court held that the appellant's act of immediately stabbing the victim and inflicting a wound on a vital part of the latter's body was unreasonable and unnecessary considering that the victim used his bare fist in throwing a punch at him, as here.

Here, Dominador was unarmed at the time of the assault and he was only using his fists. Petitioner admitted that he was even able to parry Dominador's punches. Thus, the use of a bladed weapon on Dominador was unnecessary to prevent or repel the unlawful aggression.

All told, petitioner cannot be credited with complete self-defense.

We come now to the proper penalty to be imposed. Article 249 of the Revised Penal Code³¹ provides that the imposable penalty for homicide is *reclusion temporal*. Two (2) degrees lower is *prision correccional*. Taking into account the presence of the ordinary mitigating circumstance of voluntary surrender and the privileged mitigating circumstance of incomplete self-defense, the penalty of *prision correccional* shall be imposed in the minimum period, with a range of six (6) months and one (1) day to two (2) years and four (4) months. Further, applying the Indeterminate Sentence Law,³² the minimum of the penalty should be within the next range of the penalty next lower in degree, *i.e.*, *arresto mayor*. Thus, the penalty, as correctly imposed by the CA, is six (6) months of *arresto mayor* as minimum, to two (2) years and four (4) months of *prision correccional* as maximum.

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³⁰ 431 Phil. 691, 712 (2002).

³¹ Article 249. *Homicide*. – Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

³² Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

As for damages, the CA correctly awarded civil indemnity and moral damages amounting to ₱50,000.00 each. Anent actual damages, the CA reduced the same to ₱50,000.00 from ₱60,000.00 on the basis of receipts presented by the prosecution.

These amounts shall be subject to six percent (6%) interest *per annum* from finality of this resolution until fully paid.

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals in CA-G.R. CR No. 34309 dated July 8, 2015 is **AFFIRMED with MODIFICATION**.

Petitioner **Rodolfo Gallardo** is found **GUILTY** of **HOMICIDE**. He is sentenced to six (6) months of *arresto mayor* as minimum, to two (2) years and four (4) months of *prision correccional* as maximum. He is further ordered to **PAY**:

- 1) ₱50,000.00 as civil indemnity;
- 2) ₱50,000.00 as moral damages; and
- 3) ₱50,000.00 as actual damages.

These amounts shall be subject to six percent (6%) interest *per annum* from finality of this resolution until fully paid.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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PUBLIC ATTORNEY'S OFFICE
Special and Appealed Cases Service
Counsel for Petitioner
DOJ Agencies Building, Diliman
1101 Quezon City

Court of Appeals (x)
Manila
(CA-G.R. CR No. 34309)

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

The Hon. Presiding Judge
Regional Trial Court, Branch 19
Bangui, 2920 Ilocos Norte
(Crim. Case No. 1959-19)

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