

## **FIRST DIVISION**

**[ G.R. Nos. 118921-22, June 11, 1997 ]**

### **ERNESTO AUSTRIA, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

#### **D E C I S I O N**

**BELLOSILLO, J.:**

For the killing of Emilio Narral allegedly with treachery and evident premeditation, an Information for murder was filed against ERNESTO AUSTRIA and ANTONIO DATO before the Regional Trial Court of Valenzuela. After trial the court found both accused guilty of homicide and imposed upon each of them "an indeterminate penalty of twelve (12) years and one (1) day as minimum to twelve (12) years, ten (10) months and twenty (20) days as maximum (2 counts each); to both indemnify the heirs of Emilio Narral P30,000.00 each, and to pay the costs."<sup>[1]</sup> On appeal, the Court of Appeals affirmed the conviction of the accused and raised the indemnity to the heirs of the victim to "P50,000.00, with costs against the accused-appellants."

The evidence shows that at around eleven o'clock in the evening of 16 August 1976 while Emilio Narral and his wife Flora were at home at 14 Coloong II, Valenzuela, Metro Manila, Herman Nario arrived and told them that Emilio was being summoned by Ernesto Austria and Antonio Dato to discuss their misunderstanding concerning the demand by Emilio from Ernesto for the receipts of the payments for the survey of the land Emilio was occupying. Ernesto was President while Antonio was Vice President of their neighborhood association. Emilio and Herman thereafter proceeded to Antonio's store nearby in front of which were Ernesto, Antonio, Tino Codapas, Rogelio de Joya and Jaime Futol. Apprehensive that an untoward incident could occur as it was midnight, Flora followed Emilio and Herman to Antonio's store. When it appeared to her that the conversation of the group was cordial, Flora went back to her house. However, after some ten minutes she heard shouts coming from the direction of said store. She immediately went out and there saw her husband lying on the ground. In a hoarse voice Emilio told her that he was stabbed by Ernesto Austria.

Alberto de los Reyes, a lad of seventeen, who was reading komiks near the window of his house heard somebody shout, "Tinraydor ninyo ako!" coming from the direction of Antonio's store. When Alberto looked out of the window he saw Emilio being chased by Ernesto, Antonio and Tino Codapas. Antonio then held with his two hands Emilio's right arm while Codapas hit Emilio with a piece of bamboo on the head causing the latter to fall. Thereafter, Antonio lifted Emilio and at this instance Ernesto stabbed Emilio twice on the neck as he lay prostrate on the ground. His assailants then ran away. Ernesto passed by the house of Alberto and warned him and his mother not to say anything about the incident otherwise they would meet a similar fate.

Ernesto Austria testified that he, Codapas, de Joya, Futol and some other persons were gathered in front of Antonio's store that eventful night. Antonio was assisting his wife in tending their store. The group was discussing the assistance they could offer to Rey Dionido who had eloped with a certain Minda. Then Emilio who was noticeably drunk arrived and suddenly pulled out a knife from his waist. He dared everyone to fight with him. When nobody accepted his challenge, he lunged at Antonio who was fortunately able to parry the blow. Emilio then faced Ernesto and thrust the knife at him. The two grappled for possession of the weapon and in the process Ernesto accidentally hit ("nasundot") Emilio's neck with the knife. Emilio fell but was able to stand up and run towards the main road. As he staggered his head hit the wall of the house of Efren Viray. For the second time Emilio stood up but fell again.

Ernesto thus claimed self-defense while Antonio disavowed any participation in the killing of Emilio.

The Necropsy Report indicates the various injuries sustained by the victim:

Abrasions: Forehead, supra-orbital region, right side, 5.5 x 2.0 cm.; face, molar region, right side, 3.0 x 2.0 cm.; face, oral region, along upper lip, 4.5 x 3.0 cm.; back, supra-scapular regions, left and right, 6.0 x 4.0 cm. and 5.0 x 4.0 cm. respectively.

Contusion: wrist, posterior aspect, right, 14.0 x 2.5 cm.

Lacerations: Scalp, fronto-parietal, right side, 8.0 cm., parieto-occipital, left side, 6.0 cm.; occipital, left side, 2.5 cm.; occipital, posterior aspect, mid-portion, two in number, 1.5 cm. and 1.0 cm.

Wounds, stab: (1) Elliptical, 3.0 cm. long, oriented anteriorly and medially, edges, clean-cut, posterior extremity, contused, anterior extremity, sharp, chin, submandibular region, right side, 3.5 cm. from anterior median line, directed backward, upward and laterally, penetrating skin and underlying soft tissues, sub-mandibular blood vessels, taking an intramuscular course to the angle of mandible, left side and medially, with an approximate depth of 9.0 cm.; (2) Elliptical, 5.2 cm. long, oriented downward and medially, edges, clean-cut, upper extremity, contused, lower extremity, sharp, neck, anterior aspect, left side, level of Adam's apple, 5.0 cm. from anterior median line, directed backward, upward and laterally, penetrating skin and underlying soft tissues, cutting common carotid artery and jugular blood vessels, then communicating with another wound posteriorly, same side, 2.5 cm. long, 8.0 cm. from posterior median line.

Hemorrhage, meningeal, sub-arachnoidal, bi-temporal; brain and other visceral organs, pale; stomach, full of undigested rice and other food particles.

Cause of death: Hemorrhage, profuse, secondary to stab wounds of the neck.<sup>[2]</sup>

In evaluating the defense of Ernesto Austria, the trial court found no unlawful aggression on the part of the victim and brushed aside the claim of self-defense after it considered the nature, number and location of the victim's injuries. Moreover, the trial court was convinced of the role accused Antonio Dato played in the perpetration of the crime, relying on the eyewitness account of de los Reyes.

In holding that the culpability of both accused had been established beyond reasonable doubt, the trial court declared that only the crime of homicide aggravated by abuse of superior strength was committed -

Since the Court is more convinced that the group could not have gathered to plot the killing of Emilio Narral, otherwise they could have chosen a more secluded place than a store where buyers would come and go, the element of evident premeditation in murder would be absent. Since there was a quarrel between the victim and the accused's group, there would not have been treachery because Emilio Narral could have had the opportunity to act in his defense. Considering, however, that the accused was alone, and as he was stabbed by Ernesto Austria, hit on the head as his arm was held by Antonio Dato, the aggravating circumstance of abuse of superior strength against the victim was clearly present. There was likewise a clear conspiracy between the two accused and their companion (who is not included in the charge) as they helped each other in causing the injuries of Emilio Narral that led to his death.<sup>[3]</sup>

The trial court also appreciated the mitigating circumstance of provocation by the victim as he could have expressed vocal inquisitiveness, resentment and dissatisfaction against both accused during their confrontation.

On 23 September 1994 respondent Court of Appeals affirmed the conviction of both accused but increased the amount of indemnity to P50,000.00.<sup>[4]</sup> On 8 December 1994 the motion for reconsideration was denied.<sup>[5]</sup>

Petitioner Austria insists that the victim was an unlawful aggressor, as established by the corroborative testimonies of de Joya and Futol. Likewise, he stresses that the injuries on the body of Emilio were caused accidentally in the course of their grappling for the knife while the injuries on his head were sustained when he hit the wall of the house of Viray.

We sustain petitioner's conviction. Anyone who acts in defense of person or rights does not incur any criminal liability provided that the following circumstances concur: (a) unlawful aggression; (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>[6]</sup> It is clear that unlawful aggression is the main and important element of self-defense. In the absence thereof, there can be no self-defense whether complete or incomplete. We agree with the trial court that unlawful aggression on the part of the victim was absent because -

x x x x (Flora's) version is in accordance with the ordinary run of events than the version of the defense that Emilio Narral suddenly appeared and without any previous conversation started challenging anyone who is man enough to fight him, with a bladed weapon. It must be noted that there were others in the group against whom he had no grudge. Even on

the particular words which Emilio Narral allegedly uttered, the defense witnesses differed in their quotations. The version of the defense that Emilio Narral first made a sudden thrust at Antonio Dato after pulling out his knife and then faced Ernesto Austria also with a thrust at him is not credible. The group consisting of all males would not have enabled Emilio Narral to make a thrust at Antonio Dato after he was seen pulling out the bladed weapon from his waist because he could have been totally stopped by the all male group before reaching Ernesto Austria.<sup>[7]</sup>

Assuming the existence of unlawful aggression, we likewise uphold the finding that Austria exceeded the limit of what was necessary to prevent or repel it based on the nature, number and location of the injuries suffered by the victim.

There could not have been a more graphic description of the killing than the eyewitness account of Alberto de los Reyes who at the time of the incident was reading komiks near the window of his house. The succeeding narrations of de los Reyes regarding the incident that he witnessed, vivid as they were, effectively crush the version of the defense -

Q : What was that?

A: While reading komiks, I heard a remark saying, "You have betrayed me."

Q: From what direction did this remark come?

A: From the store of Tony Dato, sir.

Q: After you heard the remark "Tinraydor mo ako," what did you do?

A: I looked out of our window, sir.

Q: What did you see, if you saw anything?

A: I saw Emilio Narral running, being chased by Antonio Dato, Tino Codapas, and Ernesto Austria.

x x x x

Q: x x x x From what direction and to what direction were they running?

A: x x x x going towards our place and going outside.

x x x x

Q: What happened while Emilio Narral was being chased by Ernesto Austria, Tino Codapas and Antonio Dato?

A: I saw that Antonio Dato was able to catch up with Emilio Narral and he held Emilio Narral on the right arm.

Q: With what hand did Antonio Dato hold Emilio Narral?

A: His both hands were the ones that held the right arm of Emilio Narral, sir.

x x x x

Q: What happened after Antonio Dato was able to overtake Emilio Narral