

## SECOND DIVISION

[ G.R. No. 248130, December 02, 2020 ]

**PRUDENCIO GANAL, JR. Y BADAJOS, PETITIONER, VS. PEOPLE  
OF THE PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**LAZARO-JAVIER, J.:**

#### **The Case**

This Petition for Review assails the following issuances of the Court of Appeals in CA-G.R. CR No. 41105 entitled "*People of the Philippines v. Prudencio Ganal, Jr. y Badajos*":

- 1) Decision<sup>[1]</sup> dated March 27, 2019, affirming the trial court's conviction of petitioner for homicide but mitigated by passion and obfuscation and voluntary surrender; and
- 2) Resolution<sup>[2]</sup> dated July 2, 2019, denying petitioner's motion for reconsideration.

#### **The Facts**

##### **The Charge**

By Information dated July 5, 2013, Prudencio Ganal, Jr. (petitioner) was charged with homicide for the death of Julwin Alvarez (Julwin), thus:

That on or about May 20, 2013 in the Municipality of Baggao, Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused PRUDENCIO GANAL y Badajos armed with a handgun, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot JULWIN ALVAREZ Y JAVIER thereby inflicting upon him gunshot wounds on the different parts of his body which caused his death.

CONTRARY TO LAW.<sup>[3]</sup>

The case was raffled to the Regional Trial Court (RTC), Branch 3, Tuguegarao City. On arraignment, petitioner pleaded "not guilty".<sup>[4]</sup>

#### **Proceedings before the Trial Court**

Petitioner admitted the killing but invoked self-defense and defense of relative. Hence, the order of trial was reversed.

## **Defense's Version:**

The testimonies of Barangay Captain Sherwin Mallo, Mario Ubina (Ubina), Florante Orden Castillo, Jr. (Castillo), Prudencio Ganal, Sr. (Ganal, Sr.), Erlinda Ganal, PO3 Erick Marcelino (PO3 Marcelino) and petitioner showed that about 7 o'clock in the evening of May 20, 2013, Castillo and Ubina were drinking *Ginebra Kwarto Cantos* in petitioner's house in Santor, Baggao, Cagayan. By 9:30 o'clock in the evening, petitioner's neighbor Angelo Follante (Angelo), arrived uninvited and insisted to join the drinking session. Petitioner refused because Angelo was already very drunk. Angelo then challenged petitioner to a fight but the latter advised him to just go home. Angelo got enraged and picked up stones to throw at petitioner but Ubina was quick to take the stones away. Petitioner eventually prevailed on Angelo and the latter left. Petitioner and his companions then resumed drinking.<sup>[5]</sup>

Thirty (30) minutes later, stones were hurled at the roofs of the adjacent houses of petitioner and his father, Ganal, Sr. Ganal, Sr. went out to check and saw Angelo together with his uncle Julwin - the deceased. The two were in the middle of the road near the front gate. Ganal, Sr. approached and asked them to go home because his wife was suffering from hypertension and should not be disturbed. Julwin replied that he did not care if Ganal, Sr.'s wife died, he would kill all of them, including petitioner. Ganal, Sr. tried to pacify the two, assuring them that they would settle whatever problem they had the following day.<sup>[6]</sup>

Julwin, then holding palm-sized stones in both hands, managed to push open the gate. As Ganal, Sr. tried to pull back the gate, Julwin hit him with a stone in the chest. Ganal, Sr. fell on the plant box made of hollow blocks and passed out.<sup>[7]</sup>

Petitioner, from the main door of his house, saw what happened. Julwin, who had a knife tucked in his waistband and holding two (2) stones, advanced towards him. Petitioner thus rushed inside his house, got his gun, and fired a warning shot into the air. Ganal, Sr. this time had regained consciousness and hid near the gate. Angelo ran away but Julwin continued advancing towards him. When Julwin was about two (2) to three (3) meters away from him, petitioner thought that the victim was intent on killing him. Petitioner fired at Julwin, who in turn, pointed a finger at him, threatening to kill everyone inside the house. Afraid that Julwin would make good on his threat, petitioner fired all the rounds in his gun. Julwin fell within a meter from petitioner's door.<sup>[8]</sup>

Petitioner borrowed the cellphone of his mother Erlinda Ganal and called the Baggao Police Station. He asked assistance from PO3 Marcelino and committed to surrender himself. When the police officers arrived, petitioner admitted he killed Julwin, turned over his gun, and voluntarily surrendered.<sup>[9]</sup>

## **The Prosecution's Version**

In the evening of May 20, 2013, feast day of the patron saint of Santor, Baggao, Cagayan, Angelo dropped by petitioner's house. On his way to petitioner's house, Angelo had in his pockets stones, around 2 inches in diameter, for driving away dogs along the way. When petitioner saw the stones, he ordered Angelo to surrender them and went to get his gun. Petitioner showed the gun to Angelo and told the

latter to go home if he did not want any trouble.<sup>[10]</sup>

Instead of going home, Angelo went to Julwin's house. He saw Julwin sitting on a rocking chair outside the house. After telling Julwin what happened, Angelo momentarily went inside the house but when he returned outside, Julwin was nowhere to be found. Angelo went out to look for Julwin and saw the latter walking toward petitioner's house and go through the slightly opened gate. Thereafter, petitioner and Julwin had a confrontation. Suddenly, petitioner shot Julwin in the chest. Angelo ran away in fear and heard three (3) more shots. Petitioner followed him so he ran to the house of one Gilbert Narag. Angelo later went back to Julwin's house when he heard that the latter's body was brought there by the police. The post mortem examination showed that Julwin died due to "*severe hemorrhage secondary to multiple gunshot wounds and lacerations.*"<sup>[11]</sup>

Amelia Alvarez, Julwin's wife, claimed that she incurred P114,000.00 for the wake and burial, P24,000.00 of which was for the funeral service as evidenced by the Contract of Service issued by St. Claire Funeral Homes. The remaining P90,000.00 was spent on groceries, pigs, tomb construction, transportation and funeral mass, which were not duly receipted. Julwin was a security guard at Candice Grocery in Tuguegarao City with a monthly salary of P5,000.00 until he resigned in December 2012. He also farmed corn on land less than a hectare in size with two (2) croppings. If lucky, his harvest was around 70-100 cavans, otherwise, it was less than 70 cavans.<sup>[12]</sup>

### **The Trial Court's Ruling**

By Judgment<sup>[13]</sup> dated December 19, 2017, the trial court found petitioner guilty of homicide. It did not give credence to petitioner's claim of self-defense on the ground that the force he employed was not commensurate to Julwin's supposed unlawful aggression. The nature and number of wounds (5 bullet wounds and 2 lacerations) revealed petitioner's intent to kill. More, there was no incomplete self-defense because petitioner failed to present clear and convincing evidence that there was unlawful aggression on Julwin's part. Nor did it give credence to petitioner's claim of defense of property because the force employed by petitioner was not reasonably necessary. Petitioner could not also avail of defense of uncontrollable fear because he was unable to show that Julwin's actuations reduced petitioner to a mere instrument devoid of free will and acting merely out of compulsion.<sup>[14]</sup>

The trial court credited petitioner "passion and obfuscation" and "voluntary surrender" but not "vindication of a grave offense," imposed the corresponding penalty, and granted civil indemnity and damages.<sup>[15]</sup> Thus:

**WHEREFORE**, premises considered, the court finds accused PRUDENCIO GANAL y Badajos, Jr. GUILTY beyond reasonable doubt of the crime of HOMICIDE and applying the Indeterminate Sentence Law, it hereby sentences him:

1. To suffer an indeterminate prison sentence ranging from six (6) years *prision correccional* maximum as minimum to ten (10) years of *prision mayor* medium as maximum; and

2. To pay the heirs of Julwin Alvarez y Javier the amounts of:

- a. P50,000.00 as death indemnity;
- b. P50,000.00 as moral damages and,
- c. P25,000.00 as temperate damages.

SO ORDERED.<sup>[16]</sup>

### **Proceedings Before the Court of Appeals**

On appeal, petitioner faulted the trial court for rendering the verdict of conviction. In the main, he argued that the three (3) justifying circumstances of self-defense, defense of ascendant, and lawful defense of property rights should have been appreciated. Julwin was unlawfully aggressive towards his father, Ganal, Sr., pushing his way through the gate while carrying palm-sized stones in his hands and having a knife tucked in his waistband. Despite firing a warning shot, Julwin still continued advancing towards him while threatening to kill everyone in the house. The exempting circumstance of uncontrollable fear of an equal or greater injury can also be appreciated in his favor. In the alternative, incomplete self-defense may also be considered.<sup>[17]</sup>

The Office of the Solicitor General (OSG), through Assistant Solicitor General Diana Castañeda-De Vera and Associate Solicitor Alexis Joseph Noble, essentially countered that there was no unlawful aggression on Julwin's part and the means employed by petitioner to repel the imagined attack was not reasonable and commensurate to the supposed threat.<sup>[18]</sup>

### **The Ruling of the Court of Appeals**

By its assailed Decision<sup>[19]</sup> dated March 27, 2019, the Court of Appeals affirmed in full.

Petitioner sought reconsideration, which the Court of Appeals denied through its assailed Resolution<sup>[20]</sup> dated July 2, 2019.

### **The Present Petition**

Petitioner seeks to reverse, *via* Rule 45 of the Rules of Court, the verdict of conviction for homicide rendered against him by the trial court, as affirmed by the Court of Appeals. He faults the courts below for disregarding the alleged clear evidence that it was Julwin who initiated the unlawful aggression when he smashed a large stone on his father's chest and shouted he would kill petitioner and his family. He asserts that he only shot Julwin when, even after his warning shot, the latter persisted in attacking him and his family. Thus, he insists that the justifying circumstances of self-defense and defense of relatives should be appreciated in his favor.

### **Ruling**

We acquit.

Petitioner invokes the first and second justifying circumstances under Article 11 of the Revised Penal Code, viz.:

ARTICLE 11. Justifying Circumstances. - The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the provocation was given by the person attacked, that the one making defense had no part therein.

We note that petitioner's primary invocation is self-defense and his claim of defense of relative should be deemed subsumed therein. As it was, petitioner witnessed up close how Julwin threw stones onto the roofs of his and his father's houses, pushed his way through the gate, knocked petitioner's father unconscious, hitting the latter with a large stone on the chest, shouted threats that he would kill petitioner and his family, and advanced toward petitioner even after petitioner had already fired a warning shot. Clearly, petitioner was immediately put on the defensive when Julwin started disturbing the peace of his home and posing a risk to his safety and that of his family.

To successfully claim self-defense, an accused must satisfactorily prove these elements: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself or herself.<sup>[21]</sup>

The first element, unlawful aggression, is present here. *People v. Nugas*<sup>[22]</sup> explains the nature of unlawful aggression, thus:

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)