

EN BANC

[A.M. No. RTJ-15-2435 (Formerly A.M. No. 15-08-246-RTC), March 06, 2018]

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, V.
JUDGE WINLOVE M. DUMAYAS, BRANCH 59, REGIONAL TRIAL
COURT, MAKATI CITY, RESPONDENT.**

DECISION

PER CURIAM:

This case stemmed from the charges against respondent Judge Winlove M. Dumayas of Branch 59, Regional Trial Court (RTC), Makati City, for allegedly rendering a decision without citing the required factual and legal bases and by ignoring the applicable jurisprudence, which constitutes gross misconduct and gross ignorance of the law. The antecedents of the case at bar are as follows: In the July 7, 2015 issue of the Philippine Daily Inquirer, Ramon Tulfo wrote an article entitled "*What's Happening to Makati Judges?*," where he raised certain issues against three (3) Makati City judges, one of whom is respondent Judge Dumayas for supposedly imposing a light sentence against the accused in one criminal case, when he should have found them guilty of committing murder instead. Said case is Criminal Case No. 12-2065, entitled *People v. Juan Alfonso Abastillas, et al.*

Upon investigation and review of the July 2, 2014 Decision penned by Judge Dumayas in the aforecited case, the Office of the Court Administrator (OCA) found two (2) issues with said *ponencia*, particularly in the imposition of the penalties:

First, he appreciated the presence of the privileged mitigating circumstance of incomplete self-defense by concluding that there was unlawful aggression on the part of American national George Anikow and that there was no sufficient provocation on the part of accused Crispin C. Dela Paz and Galiciano S. Datu III. In doing so, he totally ignored the positive testimony of security guard Jose Romel Saavedra and the physical evidence consisting of closed circuit television (CCTV) video footages of the incident clearly showing that Anikow had already fled, but was still pursued and viciously attacked and hit by the accused when they finally caught up with him. It is a well-settled rule that the moment the first aggressor runs away, unlawful aggression on the part of the first aggressor ceases to exist, and when the unlawful aggression ceases, the defender no longer has any right to kill or wound the former aggressor; otherwise, retaliation and not self-defense is committed. Retaliation is not the same as self-defense. In retaliation, the aggression that the injured party started had already ceased when the accused attacked him, while in self-defense, aggression was still existing when the aggressor was injured by the accused.

Second, without mentioning any factual or legal basis therefor, Judge Dumayas appreciated in favor of Dela Paz and Datu III the ordinary mitigating circumstance of voluntary surrender, contrary to Saavedra's positive testimony that the four (4)

accused, including Dela Paz and Datu III, warned him not to report the incident or note their plate number as they were leaving the scene of the incident. Besides, two (2) other Rockwell security guards testified that they apprehended the four (4) accused in the vehicle as they were leaving the Rockwell Center before they were turned over to the custody of the police. In appreciating said ordinary mitigating circumstance, Judge Dumayas never cited any factual or legal reason to justify the same, as there was nothing in the record that supports his conclusion. In fact, the evidence presented show otherwise. By deliberately not explaining in his Decision how he arrived at his conclusion that Dela Paz and Datu III voluntarily surrendered, Judge Dumayas violated Section 14, Article VIII^[1] of the Constitution.

In a Resolution dated August 25, 2015, the Court *En Banc* directed Judge Dumayas to show cause why no disciplinary action should be taken against him for ignoring existing jurisprudence on unlawful aggression and for inappropriately appreciating the ordinary mitigating circumstance of voluntary surrender without citing any basis, when he rendered his Decision dated July 2, 2014 in Criminal Case No. 12-2065.

In his Compliance dated October 18, 2015, Judge Dumayas argued that judges cannot be held civilly, criminally, and administratively liable for any of their official acts, no matter how erroneous, as long as they act in good faith. He vehemently denied having conveniently ignored the existing jurisprudence on unlawful aggression. He explained that his ruling was based on the fact that the mortal wound on Anikow's neck was inflicted when there was still unlawful aggression on his part against the accused, which placed the latter in legitimate self-defense. It was only after the first fist fight that Anikow ran away.

He likewise apologized for failing to quote in his Decision the portions of the testimony of the prosecution witnesses attesting to the voluntary surrender of the accused. He quoted the testimony of Dominador H. Royo, one of the security guards who apprehended the accused when they were trying to leave Rockwell Center:

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Q: What did you tell to the driver again?

A: I told him that there was a problem at the upper part of Rockwell Drive so I asked him to surrender his license to me, sir.

Q: Was there any resistance on his part to surrender his license or he just gave it to you voluntarily?

A: Voluntarily sir.

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Q: Now if the driver intended to leave he could just left you there and then he could just spread out correct?

A: Yes sir.

Q: But he did not?

A: Yes sir.

Q: So there was really no intention to escape, correct?

A: Yes sir. ^[2]

Judge Dumayas stressed that the aforementioned testimony clearly shows that the accused indeed voluntarily surrendered to the security guards who stopped them, and later to the police officers, when they were turned over to the latter's custody.

On April 18, 2017, the OCA recommended the imposition of the extreme penalty of dismissal, thus:

PREMISES CONSIDERED, we respectfully recommend for the consideration of the Court that **Judge Winlove M. Dumayas**, Branch 59, Regional Trial Court, Makati City, be **ADJUDGED GUILTY** of gross ignorance of the law or procedure and gross misconduct, and be **METED** the penalty of **DISMISSAL** from the service, with forfeiture of his retirement benefits, except his accrued leave credits, and with prejudice to reinstatement in any branch of the government, including government owned and controlled corporations.

RESPECTFULLY SUBMITTED.^[3]

The Court's Ruling

The Court finds no cogent reason to depart from the findings and recommendations of the OCA.

It is clear that Judge Dumayas failed to hear and decide the subject case with the cold neutrality of an impartial judge. As aptly found by the OCA after its exhaustive investigation, first, Judge Dumayas downgraded the offense charged from murder to homicide. Second, he inappropriately appreciated the privileged mitigating circumstance of self-defense and the ordinary mitigating circumstance of voluntary surrender despite the overwhelming testimonial and physical evidence to the contrary. Third, he sentenced Dela Paz and Datu III to suffer an indeterminate penalty of imprisonment of four (4) years, two (2) months, and one (1) day, as minimum, to six (6) years of *prision correccional*, as maximum, which made them eligible for probation. Finally, he granted the separate applications for probation of Dela Paz and Datu III, effectively sparing them from suffering the penalties they rightfully deserve. The pattern of said acts appears to be deliberate, calculated, and meant to unduly favor the accused, and at the same time, can be characterized as flagrant and indifferent to the consequences caused to the other parties, including the State.

On November 27, 2012, an Information was filed charging Juan Alfonso Abastillas, Crispin Dela Paz, Osric Cabrera, and Galiciano Datu III with the crime of murder under Article 248 of The Revised Penal Code, thus:

On the 24th day of November 2012, in the City of Makati, Philippines, accused, conspiring and confederating with one another and all of them mutually helping and aiding, one another, with intent to kill and with the qualifying circumstance of abuse of superior strength did then and there wilfully, unlawfully and feloniously attack, assault, employ personal violence and stab one George Anikow with a knife, thereby inflicting upon the latter injuries and wounds on the different parts of his body, the fatal one of which is the stab wound on his neck, which directly caused his death.^[4]

In his Decision, Judge Dumayas discussed his findings on the existence of self-defense, thus:

The prosecution's evidence, however, likewise proves that (1) there was unlawful aggression on the part of Anikow; and (2) there was no provocation on the part of any of the accused.

To quote again from the February 21, 2013 Resolution of the Court, "No Less than the sworn statement of the eyewitness Saavedra was explicit on this account."

"x x x x at nagulat na lang ako ng may kumalabog at nakita ko na hinampas nitong foreigner gamit ang kanyang kamay ang gawing kaliwa ng sasakyan, at napatigil ang sasakyan at bumaba ang apat na lalaking sakay nito, at ito naman foreigner ay sumugod papalapit sa apat, at ako naman ay umawat at namagitan at don nakakasalitaan na at galit na din itong apat na lalaki, at don biglang sinugod at sinuntok ni foreigner ang isa sa apat at nagkagulo na, at ako naman at sige pa rin sa ka-aawat at ini-iwas ko rin ang aking hawak na shot gun dahil baka ito ay ma-agaw sa akin at don tumakbo na itong foreigner papalayo sa direksyon ng Burgos, mga 30 meters siguro ang estimate ko na nilayo niya at sumugod pa ang dalawa sa suspect, samantalang yung dalawa pang suspect ay naiwan sa tabi ng Volvo nila nang abutan nila ang foreigner ay nagakasuntokan pa uli hanggang sa bumagsak ang foreigner there be actual and positive attack." [*Exhibit "C,"* emphasis supplied]

In fine, the prosecution's own evidence clearly and convincingly proves: (1) unlawful aggression on the part of Anikow, the primordial element of self-defense; and (2) lack of sufficient provocation on the part of the accused. Generally, aggression is considered unlawful when it is unprovoked or unjustified. (*People vs. Valencia*, 133 SCRA 82) The unlawful aggression of Anikow resulted in injuries to the accused. This Court takes judicial notice of the Medical Certificates issued by Dr. Nulud attesting to the said injuries attached to the records of this case.

In so far, however, as the second element of self-defense is concerned, this Court is convinced that the means employed by accused Dela Paz and Datu were unreasonable - there was no rational equivalence between the means of attack and the means of defense. Reasonableness of the means employed depends on the imminent danger of the injury to the person attacked; he acts under the impulse of self-preservation. He is not going to stop and pause to find out whether the means he has in his hands is reasonable. (*Eslabon vs. People*, 127 SCRA 785) True, Anikow committed unlawful aggression against the accused with his fists.

However, the means used by the accused were unreasonable.^[5]

Curiously, Judge Dumayas himself stated in his Decision that the accused never invoked self-defense, and yet, he was quick to declare that there was unlawful aggression based on clear and convincing evidence, to wit:

x x x x

Accused Abastillas did not invoke self-defense but attempted to cast doubt on the prosecution's evidence that he inflicted the fatal wound on the neck of Anikow and a wound on his back.

x x x x

The Court attaches great significance and importance to the CCTV video footage and the image frames extracted from it. Bereft of the aforesaid objectionable evidence of the prosecution, the CCTV footages and images would show that it was not accused Abastillas who inflicted the fatal blow neither was he who inflicted the wound on the back of Anikow. xxx

x x x x

In this jurisdiction, in self-defense, the burden of proof rests upon the accused and must be established by clear and convincing evidence. (*People vs. Corecor*, 159 SCRA 84) In this case, however, **the prosecution's own evidence clearly and convincingly establishes unlawful aggression and lack of provocation on the part of any of the accused, which relieves them from the duty of proving the same.**^[6]

It is settled that self-defense is an affirmative allegation and offers exculpation from liability for crimes only if timely invoked and satisfactorily proved. When the accused admits the act charged but interposes a lawful defense, the order of trial may be modified^[7] and the burden shifts to the accused to prove that he indeed acted in self-defense by establishing the following with clear and convincing evidence: (1) unlawful aggression on the part of the victims; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) lack of sufficient provocation on his part. Self-defense cannot be justifiably appreciated when it is extremely doubtful by itself. Indeed, in invoking self-defense, the burden of evidence is shifted and the accused claiming self-defense must rely on the strength of his own evidence and not on the weakness of the prosecution.^[8] Without a doubt, respondent judge seems to have forgotten this established legal principle.

In his Compliance, Judge Dumayas never denied the existence of evidence showing that Anikow fled from the accused after the first fist and after that the accused went after him. But he claims that the fatal wound was inflicted on Anikow during the first scuffle when the aggression on his part was still existing, which placed the accused in legitimate self-defense. In his Decision, however, it is clear that he appreciated the existence of the mitigating circumstance of incomplete self-defense even without the accused invoking and proving the same, simply because the prosecution itself clearly and convincingly proved the existence of unlawful aggression and lack of sufficient provocation from any of the accused. His complete disregard of the settled rules and jurisprudence on self-defense and of the events that transpired after the first fight, despite the existence of testimonial and physical evidence to the contrary, in the appreciation of the privileged mitigating circumstance of incomplete self-defense casts serious doubt on his impartiality and good faith. Such doubt cannot simply be brushed aside despite his belated justification and explanation.

Under Canon 3 of the New Code of Judicial Conduct, impartiality applies not only to the decision itself, but also to the process by which the decision is made. When Judge Dumayas chose to simply ignore all the evidence showing that the accused