

## THIRD DIVISION

[ G.R. No. 227421, July 23, 2018 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RODOLFO OLARBE Y BALIHANGO, ACCUSED-APPELLANT.**

### DECISION

**BERSAMIN, J.:**

The accused who shows by clear and convincing evidence that the death of the victim arose from the need for self-preservation in the face of the victim's deadly unlawful aggression, and there was a reasonable necessity of the means employed to prevent or repel the same, is entitled to acquittal on the ground of self-defense in the absence of any indication of his having provoked such unlawful aggression.

In self-defense and defense of stranger, the circumstances as the accused perceived them at the time of the incident, not as others perceived them, should be the bases for determining the merits of the plea.

#### The Case

For the killing of the late Romeo Arca, accused Rodolfo Olarbe y Balihango (Olarbe) was charged with and convicted of murder by the Regional Trial Court (RTC), Branch 27, in Santa Cruz, Laguna through the judgment rendered on August 13, 2014 in Criminal Case No. SC-12274.<sup>[1]</sup>

On appeal, the Court of Appeals (CA) affirmed the conviction on March 22, 2016.<sup>[2]</sup>

#### Antecedents

The information charged Olarbe with murder, *viz.*:

That on or about May 7, 2006 at about 12:00 o'clock midnight, at Sitio Pananim, Municipality of Luisiana, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with evident premeditation and treachery and with the use of a rifle (airgun) converted to caliber .22 and a *bolo*, did then and there, willfully, unlawfully and feloniously shoot and hack one ROMEO ARCA with the said weapons, thereby inflicting upon him gunshot wound and hacking wounds on the different parts of his body which resulted to (sic) his instantaneous death, to the damage and. prejudice of his surviving heirs.

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

The CA recounted the factual and procedural background of the case in its assailed decision thusly:

Arraigned, OLARBE initially pled not guilty to the crime charged. Upon re-arraignment, OLARBE pleaded guilty but subsequently withdrew his plea of guilt and manifested for the presentation of his defense. Thereafter, trial on the merits ensued.

The prosecution's diegesis of the case is synthesized as follows:

On 8 May 2006 at around 12:30 o'clock midnight, OLARBE voluntarily surrendered to police officers SPO2 Vivencio Aliazas, PO3 Ricardo Cruz and PO1 William Cortez at the Police Station of Luisiana, Laguna. OLARBE informed them that he happened to have killed Romeo Arca (Arca) in Sitio Pananim, Luisiana, Laguna. Forthwith, OLARBE was booked, arrested and detained at the police station. Thereafter, the police officers proceeded to the crime scene and found the lifeless body of Arca with several wounds and the *bolo* used by OLARBE in killing him. The *Death Certificate* revealed that Arca's antecedent cause of death was gunshot wounds and his immediate cause of death was hacked wounds.

For his part, OLARBE invoked self-defense and avowed -

On the fateful incident, he and his wife Juliet were sleeping in their house in *Barangay* San Antonio, Sitio Pananim, Luisiana, Laguna. Suddenly they were awakened by the sound of a gunshot and shouting from Arca who appeared to be drunk. Arca was holding a rifle (an airgun converted to a calibre .22) and shouted "*mga putang ina ninyo, pagpapatayin ko kayo.*" Then, Arca forcibly entered their house and aimed the gun at them. OLARBE immediately grabbed the gun from him and they grappled for its possession. OLARBE managed to wrest the gun away from Arca. In a jiff, OLARBE shot Arca causing the latter to lean sideward ("*napahilig*"). Nevertheless, Arca managed to get his *bolo* from his waist and continued to attack them. OLARBE grabbed the *bolo* and in their struggle for its possession, they reached the outer portion of the house. OLARBE was able to wrestle the *bolo* and instantly, he hacked Arca. After the killing incident, OLARBE voluntarily surrendered to the police authorities.<sup>[4]</sup>

### **Judgment of the RTC**

Rejecting Olarbe's pleas of self-defense and defense of stranger, the RTC pronounced him guilty of murder as charged. It observed that the initial unlawful aggression by Arca had ceased when Olarbe shot him in the head and caused him to "lean sideward." It disbelieved Olarbe's insistence that Arca had still been able to grab his *bolo* and assault Olarbe's common-law spouse therewith for being implausible considering that Arca had by then been hit in the head. It held that Olarbe's testimony that he had wrested the *bolo* from Arca after grappling for its control, and had then hacked him with it was improbable and not in accord with the natural order of things because the injury in the head had already weakened and subdued Arca; and that the killing was treacherous because Olarbe had hacked the then unarmed and weakened victim.

The dispositive portion of the judgment of the RTC reads:

WHEREFORE, this court finds that herein accused was unable to prove the justifying circumstance of self-defense by clear, satisfactory and convincing evidence that excludes any vestige of criminal aggression on his part and further, he employed treachery when he killed the victim Romeo Arca. Thus, this Court finds the accused Rodolfo Olarbe y Balihango **GUILTY** of "Murder".

On the other hand, finding that herein accused voluntarily surrendered to the police authorities of the Municipal Police Station of Luisiana, Laguna immediately after killing Romeo Arca, he is entitled to the said mitigating circumstance. The accused Rodolfo Olarbe y Balihango is thereby hereby sentenced to the minimum penalty of imprisonment for the crime of murder, which is a period of TWENTY (20) YEARS AND ONE (1) DAY TO RECLUSION PERPETUA.

The accused Rodolfo Olarbe y Balihango is also hereby ordered to pay to the heirs of Romeo Arca the following:

Civil indemnity in the amount of P75,000.00;

Moral damages in the amount of P50,000.00;

Actual damages in the following amounts - P1,000.00 as expenses for church services from the Iglesia Filipina Independiente; the amount of P1,200.00 for expenses incurred in Jeralyn's Flower Shop; the amount of P20,000.00 paid to Mancenido Funeral Service; fees paid to the Municipal Treasurer of Luisiana in the amount of P150.00; and, the amount of P15,000.00 paid for the burial lot; and,

Exemplary damages in the amount of P30,000.00.

SO ORDERED.<sup>[5]</sup>

### **Decision of the CA**

On appeal, the CA affirmed the conviction of Olarbe because the factual findings of the RTC were consistent with the evidence on record and accorded with human experience; and because treachery had attended the killing. The *fallo* of the assailed decision reads:

**WHEREFORE**, the *Appeal* is hereby **DENIED**. The *Judgment* dated 13 August 2014 of the Regional Trial Court, Fourth Judicial Region, Santa Cruz, Laguna, Branch 27, in Criminal Case No. SC-12274, is **AFFIRMED with MODIFICATION** in that accused-appellant Rodolfo Olarbe is **ORDERED** to pay temperate damages in the amount of P25,000.00. He is further **ORDERED** to pay interest at the rate of six percent (6%) per annum on the civil indemnity, moral, exemplary and temperate damages awarded from the finality of this judgment until fully paid.

## **SO ORDERED.**<sup>[6]</sup>

Hence, this appeal.

The accused and the Office of the Solicitor General (OSG) have separately manifested that they would no longer be filing supplemental briefs in this appeal; and prayed that their respective briefs filed in the CA should be considered.<sup>[7]</sup>

### **Issue**

In his appellant's brief filed in the CA, Olarbe submitted that it was erroneous to reject his pleas of self-defense and defense of stranger because he had killed Arca to save himself and his common-law wife from the latter's unlawful aggression; that his use of the victim's gun and *bolo* to repel or stop the unlawful aggression was necessary and reasonable; and that the killing was consequently legally justified.

The OSG countered that it was Olarbe who had mounted the unlawful aggression against Arca; and that the latter had been defenseless when Olarbe hacked him to death.

### **Ruling of the Court**

The appeal has merit.

An accused who pleads any justifying circumstance in Article 11 of the *Revised Penal Code* admits to the commission of acts that show the commission of a crime. It thus becomes his burden to prove the justifying circumstance with clear and convincing evidence; otherwise, his conviction for the crime charged follows.<sup>[8]</sup>

In order for Olarbe to exonerate himself on the ground of self-defense under Article 11, paragraph 1,<sup>[9]</sup> of the *Revised Penal Code*, he must establish the following facts, namely: (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.

Olarbe also invoked defense of stranger under Article 11, paragraph 3,<sup>[10]</sup> of the *Revised Penal Code* because Arca was likewise attacking his common-law spouse. Defense of stranger requires clear and convincing evidence to prove the following, to wit: (1) unlawful aggression by the victim; (2) reasonable necessity of the means to prevent or repel it; and (3) the person defending be not induced by revenge, resentment or other evil motive.<sup>[11]</sup>

The indispensable requisite for either of these justifying circumstances is that the victim must have mounted an unlawful aggression against the accused or the stranger. Without such unlawful aggression, the accused is not entitled to the justifying circumstance.<sup>[12]</sup> The essence of the unlawful aggression indispensable in self-defense or defense of stranger has been fully discussed in *People v. Nugas*,<sup>[13]</sup> 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) 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.

Let us now revisit the events of that fateful night of May 7, 2006. Arca, armed with the rifle (described as an airgun converted into a caliber .22) and the *bolo*, went to the house of Olarbe towards midnight. The latter and his household were already slumbering, but were roused from bed because Arca fired his gun and was loudly shouting, *Mga putang ina ninyo, pagpapatayin ko kayo*. Thereafter, Arca forcibly entered Olarbe's house. Olarbe managed to take the gun of Arca, and they struggled for control of it. Upon wresting the gun from Arca, Olarbe fired at him, causing him to totter. But Arca next took out the *bolo* from his waist and charged at Olarbe's common-law spouse. This forced Olarbe to fight for possession of the *bolo*, and upon seizing the *bolo*, he hacked Arca with it.

Arca's death was certified to have been due to the gunshot on the head and hacking wounds. The CA noted the following injuries, aside from the gunshot wound in the head, namely:

- Lacerated wound on the forehead;
- Lacerated wound, front rib area;
- Lacerated wound on the left upper quadrant;
- Lacerated wound on the left lower quadrant;
- Lacerated wound on the occipital area
- Two (2) hacking wounds posterior of neck; and
- Hacking wound on lumbar area.<sup>[14]</sup>

Only Olarbe's account of the incident existed in the records, but instead of giving weight to the account, the RTC and the CA rejected his pleas of self-defense and defense of stranger based on their common holding that Arca had been weakened