

THIRD DIVISION

[G.R. No. 196945, September 27, 2017]

**DANILO REMEGIO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

MARTIRES, J.:

This is a Petition for Review on Certiorari assailing the Decision,^[1] dated 16 September 2008, and Resolution,^[2] dated 6 April 2011, of the Court of Appeals (CA) in CA-G.R. CR No. 00312, which affirmed with modification the Decision,^[3] dated 16 September 2005, of the Regional Trial Court, Branch 13, Culasi, Antique (RTC), in Criminal Case No. C-358 finding petitioner Danilo Remegio (*petitioner*) guilty of homicide as defined and penalized under Article 249 of the Revised Penal Code (RPC).

THE FACTS

In an Information, dated 19 November 1999, petitioner was charged with homicide, committed as follows:

That on or about the 12th day of December 1998, in the Municipality of Culasi, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the said accused, being then armed with an illegally possessed firearm, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with said firearm one Felix Sumugat, thereby inflicting upon the latter fatal wound on the vital part of his body which caused his instantaneous death.

Contrary to the provisions of Article 249 of the Revised Penal Code.^[4]

Petitioner pleaded not guilty to the crime charged. In the pre-trial conference, the parties stipulated on the fact that petitioner killed Felix Sumugat (*Sumugat*) on 12 December 1998, at Barangay Jalandoni, Culasi, Antique, without prejudice to petitioner's plea of self-defense.^[5] As a result of petitioner's claim of self-defense, the order of trial was reversed.

Version of the Defense

The defense presented petitioner and Diosdado Bermudez (*Bermudez*) as its witnesses. Their combined testimony tended to establish the following:

Petitioner was the caretaker of a parcel of land belonging to his brother-in-law, Isidro Dubria. The said land was planted with various fruit-bearing trees as well as coconut, mahogany, and *ipil-ipil* trees.^[6] On 12 December 1998, at around nine

o'clock in the morning, petitioner heard the sound of a chainsaw. He then saw the victim, Sumugat, cutting the *ipil-ipil* tree which was uprooted during the typhoon that occurred on the previous day.^[7]

Petitioner approached Sumugat. He told him to cut only the branches of the *ipil-ipil* tree and not its trunk as it would be placed in the warehouse because his in-laws would be arriving from the United States. Sumugat became infuriated and shouted, "*You have nothing to do with this. You are only an in-law. I will kill you.*" He then drew a revolver from his waist and aimed it at petitioner.^[8]

Petitioner raised both of his hands and told Sumugat that he would not fight him, but Sumugat repeated that he would kill him. Fearing for his life, petitioner grappled with Sumugat for possession of the gun. He successfully took the gun from Sumugat but the latter picked up the chainsaw, turned it on, and advanced towards petitioner. Petitioner stepped back and shot at the ground to warn Sumugat, but the latter continued thrusting the chainsaw at him. Petitioner parried the chainsaw blade with his left hand, but he lost his balance and accidentally pressed the gun's trigger, thus firing a shot which hit Sumugat in the chest.^[9]

Version of the Prosecution

The prosecution presented Bernardo Caduada (*Caduada*), Hermie Magturo (*Magturo*), Rolando Dubria, and Dr. Feman Rene M. Autajay as its witnesses. Their combined testimony tended to establish the following:

Petitioner approached Sumugat who was cutting the *ipil-ipil* tree with the chainsaw.^[10] He told Sumugat that if the latter did not desist from cutting the tree, he would shoot him. Sumugat answered that the tree was obstructing the way. Petitioner then drew his gun and fired at Sumugat's direction, but he missed.^[11] Sumugat turned on the chainsaw, which provoked petitioner to shoot him on the left foot. Infuriated, Sumugat continued to brandish the chainsaw, but petitioner shot him in the chest.^[12] Before he fell down, Sumugat swung the chainsaw, hitting petitioner in the palm. Petitioner then threw the gun into a canal.^[13]

Magturo and Caduada executed a Joint Affidavit^[14] on 2 February 1999, narrating the incident they witnessed on 12 December 1998. In his direct examination, however, Magturo stated that he did not understand the affidavit's contents at the time of signing.^[15] Moreover, he testified that he was unfamiliar with the contents of the said affidavit because he did not witness the incident.^[16] On the other hand, Caduada, on cross-examination, affirmed that he executed an Affidavit of Retraction^[17] on 9 December 2002, because his conscience bothered him for telling a narration of facts which he did not actually witness.^[18]

The RTC Ruling

In its Decision, dated 16 September 2005, the RTC found petitioner guilty beyond reasonable doubt of the crime of homicide. Accordingly, the trial court sentenced him to imprisonment of ten (10) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay the heirs of Sumugat the

amount of P300,000.00.

The RTC ruled that the act of petitioner in telling the victim to stop cutting the tree was a provocation on his part. It added that from the moment petitioner wrested the firearm from the victim, his life was already free from any threat coming from the victim. It opined that the firing of the gun was no longer justified as the victim was already unarmed and was already crippled by the gunshot wound he sustained on his left foot. Hence, it concluded that petitioner's evidence in support of his theory of self-defense did not meet the requirements of Article 11 of the RPC. The *fallo* reads:

WHEREFORE, premises considered, having admitted the killing of Felix Sumugat, accused's evidence in the Record claiming self-defense, being not clear, not credible, not convincing, not justifiable, the Court found the accused guilty of the crime of Homicide which carries an imposable penalty of reclusion temporal, a penalty divisible by three (3) periods. Pursuant to Article 64, paragraph 2 of the Revised Penal Code, there being one mitigating circumstance of voluntary surrender, in relation to the Indeterminate Sentence Law, the Court hereby sentences the accused to an imprisonment often (10) years and one (1) day as minimum, to fourteen (14) years and eight (8) months as maximum. (same being the minimum of Reclusion Temporal) and the Court hereby, pursuant to Article 100 of the Revised Penal Code in relation to Section 1, Rule III of the Rules of Court, further orders the accused Danilo Remegio to indemnify the heirs of Felix Sumugat in the sum of P300,000.00.^[19]

Aggrieved, petitioner appealed before the CA. Meanwhile, he was granted provisional liberty pending appeal after putting up a bail bond in the amount of P40,000.00.^[20]

The CA Ruling

In a Decision, dated 16 September 2008, the CA affirmed the conviction of petitioner, but modified the penalty imposed to two (2) years and four (4) months of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum. It also ordered petitioner to pay the heirs of Sumugat the amounts of P50,000.00 as funeral expenses and P50,000.00 as civil indemnity instead of the P300,000.00 imposed by the trial court.

The CA held that the element of unlawful aggression was present. It observed that the testimonies of petitioner and Bermudez were consistent and supported by the medical certificate evidencing that petitioner sustained wounds in his left hand due to parrying the chainsaw which the victim thrust at him. The appellate court declared that the prosecution's version was hardly believable considering that Caduada retracted his testimony and Magturo admitted that he was not around when the incident happened. It further noted that Rolando Dubria, a 13-year-old child, spoke only on 24 January 2005, or more than six years from the time the incident occurred; and that he was never made to give his account to the police authorities during the investigation stage. The CA also stated that the child admitted on cross-examination that Sumugat was able to inflict wounds on petitioner with the use of the chainsaw.

The appellate court, however, ruled that the element of reasonable necessity of the means employed to repel the aggression is absent. It reasoned that there could have been several ways for petitioner to repel the aggression without having to kill the victim, considering that the latter was already wounded and he held a chainsaw which was difficult to handle.

Finally, the CA adjudged that petitioner's act of telling the victim not to cut the trunk of the uprooted *ipil-ipil* tree could not be considered provocation. It disposed the case in this wise:

WHEREFORE, the **DECISION** of the Regional Trial Court Branch 13, Culasi, Antique in Criminal Case No. C-358, convicting accused-appellant of **HOMICIDE** is hereby **AFFIRMED** but with the following modifications:

1. HE IS SENTENCED TO SUFFER THE INDETERMINATE PENALTY OF 2 YEARS AND 4 MONTHS OF PRISION CORRECCIONAL AS MINIMUM, TO 6 YEARS AND 1 DAY OF PRISION MAYOR AS MAXIMUM;

2. HE IS DIRECTED TO PAY THE HEIRS OF FELIX SUMUGAT THE FOLLOWING SUMS:

i. FIFTY THOUSAND PESOS (P50,000.00) AS FUNERAL EXPENSES;

ii. FIFTY THOUSAND PESOS (P50,000.00) AS CIVIL INDEMNITY.^[21] (emphasis in the original)

Unconvinced, petitioner moved for reconsideration but the same was denied by the CA in a Resolution, dated 6 April 2011.

Hence, this petition.

ISSUE

WHETHER PETITIONER IS ENTITLED TO INVOKE THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE.

Petitioner argues, citing *US. v. Molina*,^[22] that the person attacked is not duty bound to expose himself to be wounded or killed and while the damages to his person or life subsist, he has a perfect and indisputable right to repel such danger by wounding his adversary, to disable him completely, so that he may not continue the assault; and that from the inception of the incident, until it ended, the victim did not desist from attacking the petitioner, hence, the attending circumstance of reasonable necessity of the means employed is present.^[23]

In its Comment,^[24] the Office of the Solicitor General avers that the petition, anchored on the claim of self-defense, merely raises a pure question of fact which had already been rejected by both the trial and the appellate courts, hence, it should be denied outright.

In his Reply,^[25] petitioner counters that reasonableness of the means employed

does not depend on the harm done, but upon the reality and imminence of the danger or injury to the person defending himself; and that one who is persistently assaulted by another cannot be expected to act in a normal manner, and to follow the normal processes of reasoning, and weigh the necessity of employing a certain means of defense.

THE COURT'S RULING

Self-defense, when invoked as a justifying circumstance, implies the admission by the accused that he committed the criminal act. Generally, the burden lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt rather than upon the accused that he was in fact innocent. When the accused, however, admits killing the victim, it is incumbent upon him to prove any claimed justifying circumstance by clear and convincing evidence.^[26] Well-settled is the rule that in criminal cases, self-defense shifts the burden of proof from the prosecution to the defense.^[27]

For self-defense to prosper, petitioner must prove by clear and convincing evidence the following elements as provided under the first paragraph, Article 11 of the RPC: (1) unlawful aggression on the part of the victim; (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.^[28]

Unlawful aggression

In self-defense, unlawful aggression is a primordial element.^[29] There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who defended himself.^[30] It presupposes an actual, sudden and unexpected attack or imminent danger on the life and limb of a person - not a mere threatening or intimidating attitude - at the time the defensive action was taken against the aggressor.^[31]

The pertinent parts of the transcript of stenographic notes provide thus:

[Atty. Operiano:]

Q: What exactly did you tell Felix Sumugat when you went near him while he was sawing the ipil-ipil tree?

A: I told him. "Nong, please stop this first. We have to talk."

Q: And what was the tone of your voice when you uttered those words?

A: It was in a low voice because I still respect him being older than me, sir.

Q: What did Felix Sumugat do, if any when you uttered those words?

A: He stopped the engine of the chainsaw and then laid down on the ground and said, "What?"

Q: What did Felix Sumugat say to you, if any?

A: Felix Sumugat said, "So, what do you mean to say?" I told