

## FIRST DIVISION

[ G.R. No. 171284, June 29, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ALFREDO DULIN Y NARAG, ACCUSED-APPELLANT.**

### D E C I S I O N

#### **BERSAMIN, J.:**

The accused is guilty only of homicide in a prosecution for murder where the record does not substantiate the attendance of treachery. But he may not benefit from the privileged mitigating circumstance of incomplete self-defense if there was no unlawful aggression from the victim.

#### **The Case**

Alfredo Dulin y Narag appeals the decision promulgated on August 26, 2005,<sup>[1]</sup> whereby the Court of Appeals (CA) affirmed with modification his conviction for the murder of Francisco Batulan rendered on December 29, 1997 by the Regional Trial Court (RTC), Branch 3, in Tuguegarao, Cagayan.<sup>[2]</sup> In convicting him, the RTC had appreciated the privileged mitigating circumstance of incomplete self-defense, and had then sentenced him to "suffer the penalty of reclusion temporal in its maximum period of imprisonment ranging from 17 years and 4 months and 1 day to 20 years." On appeal, the CA prescribed *reclusion perpetua*.

#### **Antecedents**

The information filed on January 7, 1991 averred as follows:

That on or about August 22, 1990, in the Municipality of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Alfredo Dulin y Narag alias Freddie, armed with a sharp blade(d) instrument, with intent to kill, with evident premeditation and with treachery did then and there willfully, unlawfully and feloniously attack, assault and stab one, Francisco Batulan, inflicting upon him several stab wounds on the different parts of his body which caused his death.

Contrary to law.<sup>[3]</sup>

During the trial, the Prosecution presented four witnesses, namely: (a) Dr. Nelson Macaraniag, (b) Alexander Tamayao, (c) Romulo Cabalza and (d) Estelita Batulan. Their version follows.

Tamayao was on Tamayao Street in Atulayan Norte, Tuguegarao at about 10:00 o'clock in the evening of August 22, 1990 when a young man came running from the

house of Vicente Danao towards the house of Batulan, shouting that his Uncle Totoy (Batulan) had been stabbed. Tamayao rushed towards Danao's house, which was about 30 meters from his own house, and there he saw Dulin stabbing Batulan who was already prostrate face down. Dulin was on top of Batulan, as if kneeling with his left foot touching the ground. Dulin was holding Batulan by the hair with his left hand, and thrusting the knife at the latter with his right hand. Seeing this, Tamayao ran towards Batulan's house to inform Estelita Batulan, the victim's wife who was his aunt, about the incident. He went home afterwards.

Tamayao mentioned of the long standing grudge between Batulan and Dulin, and of seeing them fighting in April 1990. He recalled Dulin uttering on two occasions: *He will soon have his day and I will kill him.*<sup>[4]</sup>

Cabalza, a *barangay tanod*, was in his house around 10:00 o'clock in the evening of August 22, 1990 when he heard the commotion in Danao's house which was facing his house. It was Carolina, Danao's daughter, screaming for help. He thus sought out a fellow *barangay tanod*. On his return to the scene, he found Batulan at the door of Danao's house, with Dulin wielding a sharp pointed instrument, about 6-7 inches long. Fearing for his safety, he rushed to the Barangay Hall to seek the assistance of Edwin Cabalza and Nanding Buenaflor to bring Batulan to the Provincial Hospital in Carig, Tuguegarao.<sup>[5]</sup>

Estelita recalled that Tamayao went to her house around 10:00 o'clock in the evening of August 22, 1990 to inform her that Dulin had stabbed her husband in Danao's house. She rushed to Danao's house but fainted on the way. Upon regaining consciousness, she learned that her husband had been rushed to the hospital. On her way to the hospital, she met *Barangay* Captain Loreto Meman, who told her: *Finally, Freddie Dulin killed your husband as he vowed to do.* At the hospital, she was told that her husband had sustained two wounds in the back and several stab wounds in the front, and was being attended to at the hospital's intensive care unit (ICU) before he expired.

Estelita said that *Barangay* Captain Meman went to her husband's wake and repeated what he had said to her about Dulin. But when she later on sought out *Barangay* Captain Meman to ask him to confirm what he had told her about Dulin's vowing to kill her husband, *Barangay* Captain Meman's response was: *I'm sorry I cannot go and declare what I have stated because I am afraid of FREDDIE and he will kill all those persons who will testify in their favor.*<sup>[6]</sup>

Estelita mentioned of the heated discussion between her husband and his nephew, Seong Bancud, in front of Danao's house in April 1990. On that occasion, Dulin wielded a knife with which he tried to stab her husband. Dulin was pacified only when she went to the aid of her husband, but she then heard Dulin saying: *You will soon have your day, I will kill you.*<sup>[7]</sup>

Batulan was attended to at the Cagayan Valley Regional Hospital on August 22, 1990 by Dr. Macaraniag, who said that the victim was in a state of shock from his 12 stab wounds. Dr. Macaraniag was part of the three teams that conducted the surgery on Batulan. He issued the Medico-Legal Certificate<sup>[8]</sup> attesting that Batulan died on August 24, 1990 at 12:15 a.m.; and that Batulan had sustained several injuries, as follows:

## Multiple stab wounds #12

- (1) Lacerated wound, sternum, 1 cm.
- (2) Lacerated wound, 4<sup>th</sup> ICS, 2 cm. MCL
- (3) Lacerated wound, 1 cm. post axillary line
- (4) Lacerated wound, 3 x 2 cm. 3 cm below scapula
- (5) Lacerated wound, 3 cm. lateral aspect, left hand
- (6) Lacerated wound, 3 cm. anterior aspect, left hand
- (7) Lacerated wound, 3 cm. anterior aspect, about 3 cm. from elbow, left
- (8) Lacerated wound, 2 cm. middle third, left forearm
- (9) Lacerated wound, 3 cm. posterior aspect left forearm 4 cm. from left wrist
- (10) Lacerated wound, 3 cm. lateral aspect of left foot
- (11) Lacerated wound, 4 cm. lateral aspect, left thigh
- (12) Lacerated wound, 2 cm. scapular area.

[illegible]

Dr. Macaraniag stated the cause of death to be “Hypovolemic shock secondary to Massive Hemothorax secondary to Multiple stab wounds.”<sup>[10]</sup> He clarified in court that there were clerical errors in the preparation of the Medico-Legal Certificate because his handwritten records indicated that Batulan had sustained stab instead of lacerated wounds. He surmised that one of the clerks could have misread his handwriting in the process of transcription.<sup>[11]</sup>

Estelita declared that her late husband had earned a living from buying pigs, deriving a monthly income of P8,000.00; that their marriage bore only one child; that she spent more or less P6,500.00 for Batulan's hospitalization, including his medicines, and P36,000.00 for Batulan's 10-day wake, his burial attire and his coffin; that during the wake she butchered one cow worth P6,800.00 and six pigs worth P15,000.00; that his death caused her and her family so much pain; and that she and her family expended a total of P70,000.00, plus the P20,000.00 for the counsel's services in bringing the criminal charge against Dulin.<sup>[12]</sup>

In his defense, Dulin testified that in the evening of August 22, 1990, he was in his house in Atulayan Norte, Tuguegarao, Cagayan with Doming Narag, Imelda Danao, Jun Danao, Carolina Dulin and Caridad Narag; that Nicanor Annariao and Raymund Soriano arrived at his house to see the fighting cocks being sold by Alberto Eugenio (Alberto); that Alberto was not yet around, arriving only at about 8:00 o'clock in the evening to talk with Raymund and Nicanor about the price of the fighting cocks; that

after their transaction, Alberto served Nicanor and Raymund food, and he (Dulin) and Jun Danao thereafter accompanied Raymund and Nicanor to the highway to get a tricycle ride, but on their way, they passed Angel Bancud who called out to him: that he (Dulin) asked the others to go ahead, and he would just catch up with them; that as he (Dulin) approached Bancud, Batulan, the cousin of his (Dulin) mother, stabbed him on the right side of his body and in the left hand; that he complained to Batulan: *Uncle, you hit me (Dinisgrasya nakun)*, but Batulan replied: *I will really kill you*; that he (Dulin) ran to the upper level of Carolina Danao's house, pursued by Batulan who stabbed him again several times; that they grappled for the weapon until he (Dulin) was able to wrest it from Batulan; that he (Dulin) stabbed Batulan with the weapon, and they struggled until he (Dulin) felt weak, eventually falling to the ground; and that he (Dulin) regained consciousness only the next day at the hospital.

Dulin insisted that there was no grudge between him and Batulan, but interjected that the *barangay* captain would summon him to bring Batulan home each time the latter got drunk at night.

Erlinda Danao, Records Officer of the Cagayan Valley Regional Hospital in Tuguegarao, Cagayan, authenticated the hospital records showing that Dulin had also been injured.<sup>[13]</sup>

### **Judgment of the RTC**

On December 29, 1997, the RTC rendered its decision convicting Dulin of murder, <sup>[14]</sup> to wit:

WHEREFORE, judgment is hereby rendered finding the accused Alfredo Dulin guilty beyond reasonable doubt of the crime of Murder, and appreciating the privileged mitigating circumstance of incomplete self-defense and no aggravating circumstance, this Court hereby lowers the penalty of said crime by two degrees and hereby sentences him to suffer the penalty of reclusion temporal in its maximum period of imprisonment ranging from 17 years and 4 months and 1 day to 20 years and to indemnify the heirs of the victim in the amount of P50,000.00 and to pay actual damages in the amount of P36,000.00 and moral damages for P40,000.00.

Without subsidiary imprisonment in case of insolvency and without pronouncement as to costs.

SO ORDERED.<sup>[15]</sup>

### **Decision of the CA**

In his appeal, Dulin contended that his crime should be homicide instead of murder, considering the RTC's appreciation of incomplete self-defense as a privileged mitigating circumstance; and that even if self-defense should be unavailing, he could be found guilty only of homicide because it was the victim who had first attacked by stabbing him, and that the multiple wounds inflicted on the victim did not mean that he had not been justified in killing the victim. He argued that the penalty imposed on him was incorrect considering the absence of any aggravating

circumstance and the presence of the privileged mitigating circumstance of incomplete self-defense.

On August 26, 2005, the CA affirmed the conviction subject to the modification of the civil liability, decreeing:

The Court agrees with the OSG representing the State that the penalty requires modification. The Court *a quo* committed error in the imposition of the proper penalty. The crime committed by appellant in the case at bench is murder qualified by treachery. There being no aggravating and no mitigating circumstance, the proper penalty is *reclusion perpetua*. Where no mitigating or aggravating circumstance attended the commission of the crime, the medium period of the imposable penalty, which is *reclusion perpetua*, should be imposed by the trial court.

**WHEREFORE**, the judgment of conviction is hereby **AFFIRMED** subject to the modification of the penalty and awards of damages. Appellant **ALFREDO DULIN y NARAG** is hereby sentenced to suffer the penalty of *reclusion perpetua*. The award of P36,000 actual damages is **DELETED**. Appellant is ordered to pay the heirs of Francisco Batulan P20,000 as temperate damages and P50,000 by way of moral damages.

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

On January 12, 2006, the CA denied Dulin's motion for reconsideration.<sup>[17]</sup>

### **Issues**

In this appeal, Dulin submits the following issues for our review and consideration, to wit:

#### **I**

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FAILING TO APPRECIATE THE PRESENCE OF THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE DESPITE CLEAR AND CONVINCING EVIDENCE SHOWING THE ELEMENTS OF SELF-DEFENSE.

#### **II**

WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT CONSIDERING SELF-DEFENSE AS A PRIVILEGED MITIGATING CIRCUMSTANCE, IN THE EVENT THAT THE APPRECIATION OF A COMPLETE SELF-DEFENSE IS UNAVAILABLE.

#### **III**

WHETHER OR NOT THE COURT OF APPEALS ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY IN THE KILLING OF FRANCISCO.<sup>[18]</sup>