

THIRD DIVISION

[G.R. No. 189405, November 19, 2014]

SHERWIN DELA CRUZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND CARLOS ALBERTO L. GONZALES, IN BEHALF OF HIS DECEASED BROTHER, JEFFREY WERNHER L. GONZALES, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to annul and set aside the May 7, 2009 Decision^[1] of the Court of Appeals, in CA-G.R. CV No. 89257, finding petitioner Sherwin Dela Cruz guilty beyond reasonable doubt of the crime of Homicide, and its August 19, 2009 Resolution^[2] denying his motion for reconsideration.

Petitioner was charged with the crime of Homicide in an Information^[3] dated March 2, 2005, which alleged:

That on or about the 1st day of January 2005, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and ***with the use of an unlicensed firearm***, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one JEFFREY WERNHER GONZALES Y LIM on the head, thereby inflicting upon the latter serious and mortal gunshot wound which directly caused his death.

CONTRARY TO LAW.^[4]

According to the prosecution, on January 1, 2005, at around 2:30 in the afternoon, petitioner went to the office of Sykes Asia Inc. located at the 25th Floor of Robinson's Summit Center, Ayala Avenue, Makati City. When petitioner was already inside the building, he went to the work station of the deceased victim, Jeffrey Wernher L. Gonzales (*Jeffrey*), who, by the configuration of the eyewitness Antonette Managbanag's sketch, was seated fronting his computer terminal, with his back towards the aisle. As petitioner approached Jeffrey from the back, petitioner was already holding a gun pointed at the back of Jeffrey's head. At the last second, Jeffrey managed to deflect the hand of petitioner holding the gun, and a short struggle for the possession of the gun ensued thereafter. Petitioner won the struggle and remained in possession of the said gun.

Petitioner then pointed the gun at Jeffrey's face, pulled the trigger four (4) times, the fourth shot finally discharging the bullet that hit Jeffrey in the forehead,

eventually killing him. Finally, after shooting Jeffrey, petitioner fled the office.

The defense recounted a different version of the facts.

Petitioner claimed that on January 1, 2005, at around 2:30 in the afternoon, more or less, petitioner, together with his children, went to Sykes Asia, the workplace of his wife, Darlene Dela Cruz (*Darlene*), located at the 25th Floor of Robinson's Summit Building in Makati City, to fetch the latter so that their family could spend time and celebrate together the New Year's Day.

Before entering the Robinson's Summit Building, petitioner underwent the regular security check-up/procedures. He was frisked by the guards-on-duty manning the main entrance of said building and no firearm was found in his possession. He registered his name at the security logbook and surrendered a valid I.D.

Upon reaching the 25th Floor of the same building, a security guard manning the entrance once again frisked petitioner and, likewise, found no gun in his possession; hence, he was allowed to enter the premises of Sykes Asia. The security guard also pointed to him the direction towards his wife's table.

However, as Darlene was then not on her table, petitioner approached a certain man and asked the latter as to the possible whereabouts of Darlene. The person whom petitioner had talked to was the deceased-victim, Jeffrey. After casually introducing himself as the husband of Darlene, Jeffrey curtly told him, "*Bakit mo hinahanap si Darlene?*" to which he answered, "*Nagpapasundo kasi sa akin.*" The response given by Jeffrey shocked and appalled petitioner: "*Ayaw na nga ng asawa mo sayo sinusundo mo pa!*"

Shocked by the words and reaction of Jeffrey, petitioner tried to inquire from Jeffrey who he was. But Jeffrey suddenly cursed petitioner. Then, Jeffrey suddenly picked up something in his chair which happened to be a gun and pointed the same at petitioner's face followed by a clicking sound. The gun, however, did not fire.

Seeing imminent danger to his life, petitioner grappled with Jeffrey for the possession of the gun. While grappling, the gun clicked for two (2) to three (3) more times. Again, the gun did not fire.

Petitioner was able to wrest away the gun from Jeffrey and tried to run away to avoid any further confrontation with the latter. However, Jeffrey immediately blocked petitioner's path and shouted, "*Guard! Guard!*" Immediately then, Jeffrey took hold of a big fire extinguisher, aimed and was about to smash the same on petitioner's head.

Acting instinctively, petitioner parried the attack while still holding the gun. While in the act of parrying, the gun accidentally fired due to the reasonable force and contact that his parrying hand had made with the fire extinguisher and the single bullet discharged hit the forehead of Jeffrey, which caused the latter to fall on the floor and die.

Petitioner left the gun and went out of the premises of Sykes Asia and proceeded towards the elevator. On his way to the elevator, he heard Darlene shout, "*Sherwin*

anong nangyari? ", but he was not able to answer.

After said incident, Darlene abandoned petitioner and brought with her their two (2) young children. Petitioner later learned that Darlene and Jeffrey had an illicit relationship when he received a copy of the blog of Darlene, dated January 30, 2005, sent by his friend.

During his arraignment, on August 22, 2005, petitioner, with the assistance of counsel, pleaded "Not Guilty" to the charge. Thereafter, pre-trial conference was conducted on even date and trial on the merits ensued thereafter.

During the trial of the case, the prosecution presented the oral testimonies of Marie Antonette Managbanag (*Managbanag*), Maria Angelina Pelaez (*Pelaez*) and Carlos Alberto Lim Gonzales (*Gomales*), respectively. The prosecution likewise formally offered several pieces of documentary evidence to support its claim.

For its part, the defense presented as witnesses, petitioner himself; his brother, Simeon Sander Dela Cruz III (*Cruz*), Greg Lasmarias Elbanvuena (Elbanvuena) and Managbanag, who was recalled to the witness stand as witness for the defense.

On February 26, 2007, the Regional Trial Court (*RTC*) of Makati City, Branch 147, rendered a Decision⁵ finding petitioner guilty beyond reasonable doubt of the crime of Homicide, as defined and penalized under Article 249 of the Revised Penal Code (*RPC*), the *fallo* thereof reads:

WHEREFORE, Judgment is rendered finding herein accused Sherwin Dela Cruz y Gloria Guilty beyond reasonable doubt of the crime of Homicide as defined and penalized under Art. 249 of the Revised Penal Code, and sentencing him to suffer the indeterminate penalty of Eight (8) years and One (1) day of *prision mayor* medium as Minimum to Fourteen (14) years eight (8) months and one (1) day of *reclusion temporal* medium as Maximum; to indemnify the Heirs of Jeffrey Wernher Gonzales y Lim in the amount of P50,000.00 plus moral damages in the amount of P1 Million, and to pay the costs.

SO ORDERED.^[6]

On March 28, 2007, petitioner filed a Notice of Appeal, while private respondent, through the private prosecutor, filed a Notice of Appeal on April 11, 2007 insofar as the sentence rendered against petitioner is concerned and the civil damages awarded.

After the denial of their motion for reconsideration, petitioner elevated the case to the Court of Appeals (CA). However, the latter denied their appeal and affirmed the RTC decision with modification on the civil liability of petitioner. The decretal portion of the Decision^[7] reads:

WHEREFORE, we hereby **AFFIRM** the Decision of the Regional Trial Court of Makati, Branch 147 dated 26 February 2007 finding accused-

appellant Sherwin Dela Cruz y Gloria **GUILTY** beyond reasonable doubt of the crime of Homicide with the following **MODIFICATIONS**:

- (1) to pay the heirs of the victim the amount of P50,000.00 as civil indemnity;
- (2) the amount of P50,000.00 as moral damages;
- (3) the amount of P25,000.00 as temperate damages;
- (4) the amount of P3,022,641.71 as damages for loss of earning capacity.
- (5) to pay the costs of the litigation.

SO ORDERED.^[8]

Petitioner's motion for reconsideration was denied. Hence, the present petition.

Raised are the following issues for resolution:

1. WHETHER ALL THE REQUISITES OF THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE, AS PROVIDED FOR BY LAW AND SETTLED JURISPRUDENCE, ARE PRESENT IN THIS CASE.
2. WHETHER THE FIRING OF THE GUN WHEREIN ONLY A SINGLE BULLET WAS DISCHARGED THEREFROM WAS MERELY ACCIDENTAL WHICH OCCURRED DURING THE TIME THAT THE PETITIONER-APPELLANT WAS STILL IN THE ACT OF DEFENDING HIMSELF FROM THE CONTINUOUS UNLAWFUL AGGRESSION OF THE DECEASED VICTIM.
3. WHETHER THE PROSECUTION WAS ABLE TO PROVE ALL THE ESSENTIAL ELEMENTS CONSTITUTING THE CRIME OF HOMICIDE.
4. WHETHER THE PRIVILEGED MITIGATING CIRCUMSTANCE OF SELF-DEFENSE IS APPLICABLE IN THIS CASE.
5. WHETHER PETITIONER-APPELLANT MAY BE HELD CIVILLY LIABLE FOR THE DEATH OF THE VICTIM ARISING FROM THE ACCIDENT THAT TRANSPIRED.^[9]

There is no question that petitioner authored the death of the deceased-victim, Jeffrey. What is left for determination by this Court is whether the elements of self-defense exist to exculpate petitioner from the criminal liability for Homicide.

The essential requisites of self-defense are the following: (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.^[10] In other words, there must have been an unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict severe wounds upon the assailant by employing reasonable means to resist the attack.^[11]

Considering that self-defense totally exonerates the accused from any criminal liability, it is well settled that when he invokes the same, it becomes incumbent upon him to prove by clear and convincing evidence that he indeed acted in defense of himself.^[12] The burden of proving that the killing was justified and that he incurred no criminal liability therefor shifts upon him.^[13] As such, he must rely on the strength of his own evidence and not on the weakness of the prosecution for, even if the prosecution evidence is weak, it cannot be disbelieved after the accused himself has admitted the killing.^[14]

Measured against this criteria, we find that petitioner's defense is sorely wanting. Hence, his petition must be denied.

First. The evidence on record does not support petitioner's contention that unlawful aggression was employed by the deceased-victim, Jeffrey, against him.

Unlawful aggression is the most essential element of self-defense. It presupposes actual, sudden, unexpected or imminent danger — not merely threatening and intimidating action.^[15] There is aggression, only when the one attacked faces real and immediate threat to his life.^[16] The peril sought to be avoided must be imminent and actual, not merely speculative.^[17] In the case at bar, other than petitioner's testimony, the defense did not adduce evidence to show that Jeffrey condescendingly responded to petitioner's questions or initiated the confrontation before the shooting incident; that Jeffrey pulled a gun from his chair and tried to shoot petitioner but failed — an assault which may have caused petitioner to fear for his life.

Even assuming *arguendo* that the gun originated from Jeffrey and an altercation transpired, and therefore, danger may have in fact existed, **the imminence of that danger had already ceased the moment petitioner disarmed Jeffrey by wresting the gun from the latter.** After petitioner had successfully seized it, there was no longer any unlawful aggression to speak of that would have necessitated the need to kill Jeffrey. As aptly observed by the RTC, petitioner had every opportunity to run away from the scene and seek help but refused to do so, thus:

In this case, accused and the victim grappled for possession of the gun. Accused admitted that he wrested the gun from the victim. ***From that point in time until the victim shouted "guard, guard", then took the fire extinguisher, there was no unlawful aggression coming from the victim. Accused had the opportunity to run away. Therefore, even assuming that the aggression with use of the gun initially came from the victim, the fact remains that it ceased when the gun was wrested away by the accused from the victim.*** It is settled that when 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 (Peo Vs. Tagana, 424 SCRA 620). ***A person making a defense has no more right to attack an aggressor when the unlawful aggression has ceased*** (PeoVs. Pateo, 430 SCRA 609).