

FIRST DIVISION

[G.R. No. 177743, January 25, 2012]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALFONSO FONTANILLA Y OBALDO, ACCUSED-APPELLANT.**

D E C I S I O N

BERSAMIN, J.:

An indispensable requisite of self-defense is that the victim must have mounted an unlawful aggression against the accused. Without such unlawful aggression, the accused cannot invoke self-defense as a justifying circumstance.

The accused prays for the review and reversal of the decision promulgated on June 29, 2006,^[1] whereby the Court of Appeals (CA) affirmed his conviction for murder handed down by the Regional Trial Court (RTC), Branch 34, in Balaoan, La Union.

Antecedents

At around 9:30 p.m. on October 29, 1996, Jose Olais was walking along the provincial road in Butubut Oeste, Balaoan, La Union when Alfonso Fontanilla suddenly struck him in the head with a piece of wood called *bellang*.^[2] Olais fell facedown to the ground, but Fontanilla hit him again in the head with a piece of stone. Fontanilla desisted from hitting Olais a third time only because Joel Marquez and Tirso Abunan, the sons-in-law of Olais, shouted at him, causing him to run away. Marquez and Abunan rushed their father-in-law to a medical clinic, where Olais was pronounced dead on arrival.^[3]

On April 25, 1997, the Office of the Provincial Prosecutor of La Union filed an information for murder against Fontanilla in the RTC, *viz*:

That on or about the 29th day of October 1996, along the Provincial Road at Barangay Butubut Oeste, Municipality of Balaoan, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and strike with a long coconut night stick and thereafter hit with a stone the head of Jose Olais, thereby inflicting on the latter head wounds which caused the death of the latter, to the damage and prejudice of the heirs of said victim.

CONTRARY TO LAW.^[4]

The accused pleaded *not guilty*.

The State presented Marquez and Abunan as its witnesses. They claimed that they were only several meters away from Olais when Fontanilla struck him; that they shouted at Fontanilla, who fled because of them; and that they were able to see and to identify Fontanilla as the attacker of their father-in-law because the area was then well-lighted.^[5]

Dr. Felicidad Leda, the physician who conducted the autopsy on the cadaver of Olais, attested that her post-mortem examination showed that Olais had suffered a fracture on the left temporal area of the skull, causing his death. She opined that a hard object or a severe force had hit the skull of the victim more than once, considering that the skull had been already fragmented and the fractures on the skull had been radiating.^[6]

SPO1 Abraham Valdez, who investigated the slaying and apprehended Fontanilla, declared that he had gone looking for Fontanilla in his house along with other policemen; that Fontanilla's father had denied that he was around; that their search of the house had led to the arrest of Fontanilla inside; and that they had then brought him to the police station.^[7] Valdez further declared that Fontanilla asserted that he would only speak in court.^[8]

At the trial, Fontanilla claimed self-defense. He said that on the night of the incident, he had been standing on the road near his house when Olais, wielding a nightstick and appearing to be drunk, had boxed him in the stomach; that although he had then talked to Olais nicely, the latter had continued hitting him with his fists, striking him with straight blows; that Olais, a karate expert, had also kicked him with both his legs; that he had thus been forced to defend himself by picking up a stone with which he had hit the right side of the victim's head, causing the latter to fall face down to the ground; and that he had then left the scene for his house upon seeing that Olais was no longer moving.^[9]

Fontanilla's daughter Marilou corroborated her father's version.^[10]

On June 21, 2001, the RTC declared Fontanilla guilty as charged, and disposed thusly:

WHEREFORE, in the light of the foregoing, the Court hereby renders judgment declaring he accused ALFONSO FONTANILLA Y OBALDO @ 'Carlos' guilty beyond reasonable doubt of the crime of MURDER as defined and penalized in Art. 248 of the Revised Penal Code, as amended by Republic Act No. 7659, Sec. 6, and thereby sentences him to suffer the penalty of RECLUSION PERPETUA TO DEATH and to indemnify the heirs of the victim in the amount of Fifty Thousand Pesos (P50,000.00).

SO ORDERED.^[11]

The RTC rejected Fontanilla's plea of self-defense by observing that he had "no necessity to employ a big stone, inflicting upon the victim a mortal wound causing his death"^[12] due to the victim attacking him only with bare hands. It noted that

Fontanilla did not suffer any injury despite his claim that the victim had mauled him; that Fontanilla did not receive any treatment, and no medical certificate attested to any injury he might have suffered, having been immediately released from the hospital;^[13] that Fontanilla's failure to give any statement at the time he surrendered to the police was inconsistent with his plea of self-defense;^[14] and that the manner of attack against Olais established the attendance of treachery.^[15]

On appeal, the CA affirmed the RTC, holding that Fontanilla did not establish the indispensable element of unlawful aggression; that his failure to report the incident to the police at the earliest opportunity, or even after he was taken into custody, negated the plea of self-defense; and that the nature of the victim's injury was a significant physical proof to show a determined effort on the part of Fontanilla to kill him, and not just to defend himself.^[16]

The CA ruled that treachery was attendant, because Olais had no inkling that a fatal blow was looming upon him, and because Fontanilla was inconspicuously hidden from view when he struck Olais from behind, rendering Olais unable to retaliate.^[17]

Nonetheless, the CA rectified the penalty from *reclusion perpetua* to death to only *reclusion perpetua* upon noting the absence of any aggravating or mitigating circumstance, and disposed as follows:

IN VIEW OF ALL THE FOREGOING, the appealed decision of the Regional Trial Court of Balaoan, La Union, Branch 34, in Criminal Case No. 2561 is hereby AFFIRMED with MODIFICATION that appellant Fontanilla is hereby sentenced to suffer the penalty of *reclusion perpetua*. No cost.

SO ORDERED.^[18]

The accused is now appealing, insisting that the CA erred because:

I.

THE TRIAL COURT GRAVELY ERRED IN IGNORING THE ACCUSED-APPELLANT'S CLAIM OF SELF-DEFENSE.

II.

EVEN GRANTING THAT ACCUSED-APPELLANT KILLED THE VICTIM, THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF MURDER WHEN THE QUALIFYING CIRCUMSTANCE OF TREACHERY WAS NOT PROVEN BEYOND REASONABLE DOUBT.

III.

FURTHERMORE, THE TRIAL COURT GRAVELY ERRED IN NOT APPRECIATING THE SPECIAL PRIVILEGE[D] MITIGATING CIRCUMSTANCE

OF INCOMPLETE SELF-DEFENSE AND THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.

Ruling

We affirm the conviction.

Fontanilla pleaded self-defense. In order for self-defense to be appreciated, he had to prove by clear and convincing evidence the following elements: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself.^[19] Unlawful aggression is the indispensable element of self-defense, for if no unlawful aggression attributed to the victim is established, self-defense is unavailing, for there is nothing to repel.^[20] The character of the element of unlawful aggression is aptly explained as follows:

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.^[21]

By invoking self-defense, however, Fontanilla admitted inflicting the fatal injuries that caused the death of Olais. It is basic that once an accused in a prosecution for murder or homicide admitted his infliction of the fatal injuries on the deceased, he assumed the burden to prove by clear, satisfactory and convincing evidence the justifying circumstance that would avoid his criminal liability.^[22] Having thus admitted being the author of the death of the victim, Fontanilla came to bear the burden of proving the justifying circumstance to the satisfaction of the court,^[23]

and he would be held criminally liable unless he established self-defense by sufficient and satisfactory proof.^[24] He should discharge the burden by relying on the strength of his own evidence, because the Prosecution's evidence, even if weak, would not be disbelieved in view of his admission of the killing.^[25] Nonetheless, the burden to prove guilt beyond reasonable doubt remained with the State until the end of the proceedings.

Fontanilla did not discharge his burden. A review of the records reveals that, *one*, Olais did not commit unlawful aggression against Fontanilla, and, *two*, Fontanilla's act of hitting the victim's head with a stone, causing the mortal injury, was not proportional to, and constituted an unreasonable response to the victim's fistic attack and kicks.

Indeed, had Olais really attacked Fontanilla, the latter would have sustained some injury from the aggression. It remains, however, that no injury of any kind or gravity was found on the person of Fontanilla when he presented himself to the hospital; hence, the attending physician of the hospital did not issue any medical certificate to him. Nor was any medication applied to him.^[26] In contrast, the physician who examined the cadaver of Olais testified that Olais had been hit on the head more than once. The plea of self-defense was thus belied, for the weapons used by Fontanilla and the location and number of wounds he inflicted on Olais revealed his intent to kill, not merely an effort to prevent or repel an attack from Olais. We consider to be significant that the gravity of the wounds manifested the determined effort of the accused to kill his victim, not just to defend himself.^[27]

The CA and the RTC found that treachery was attendant. We concur. Fontanilla had appeared out of nowhere to strike Olais on the head, first with the wooden stick, and then with a big stone, causing Olais to fall to the ground facedown. The suddenness and unexpectedness of the attack effectively denied to Olais the ability to defend himself or to retaliate against Fontanilla.

The imposition of *reclusion perpetua* by the CA was warranted under Article 248 of the *Revised Penal Code*,^[28] which prescribes *reclusion perpetua* to death as the penalty for murder. Under the rules on the application of indivisible penalties in Article 63 of the *Revised Penal Code*,^[29] the lesser penalty of *reclusion perpetua* is imposed if there are neither mitigating nor aggravating circumstances. Yet, the Court points out that the RTC erroneously imposed "RECLUSION PERPETUA TO DEATH" as the penalty. Such imposition was bereft of legal justification, for *reclusion perpetua* and death, being indivisible, should not be imposed as a compound, alternative or successive penalty for a single felony. In short, the imposition of one precluded the imposition of the other.

The Court also modifies the limiting of civil damages by the CA and the RTC to only the death indemnity of P50,000.00. When death occurs due to a crime, the damages to be awarded may include: (a) civil indemnity *ex delicto* for the death of the victim; (b) actual or compensatory damages; (c) moral damages; (d) exemplary damages; and (e) temperate damages.^[30]

Accordingly, the CA and the RTC should also have granted moral damages in addition to the death indemnity, which were of different kinds.^[31] The death