

SECOND DIVISION

[G.R. No. 195534, June 13, 2012]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDUARDO GONZALES, APPELLANT.

DECISION

BRION, J.:

We review the judgment of conviction for murder of Eduardo Gonzales (*appellant*) in the decision dated July 28, 2010 of the Court of Appeals^[1] (CA) in CA-G.R. CR-H.C. No. 03840. The CA affirmed the decision^[2] dated January 5, 2009 of the Regional Trial Court (*RTC*), Branch 57, San Carlos City, Pangasinan, in Criminal Case No. 2814 whose decretal portion reads:

WHEREFORE, in light of all the foregoing, this Court finds accused EDUARDO GONZALES, having failed to prove by clear and convincing evidence that his act was justified, GUILTY of the crime of Murder and hereby sentences him to suffer the penalty of *reclusion perpetua*. Accused Eduardo Gonzales is directed to pay the heirs of the victim Eligio Donato the sum of P20,000.00 as actual damages; P50,000.00 as civil indemnity and P50,000.00 as moral damages.^[3] (*italics ours*)

The Facts

The appellant and his brother, co-accused Edmundo Gonzales,^[4] were charged with murder under a criminal information which alleged conspiracy, evident premeditation and treachery in the killing of Eligio Donato (*victim*).

The records^[5] show that the victim went to the house of the appellant at the invitation of Edmundo. When the victim arrived, he was met by the appellant who was armed with a .22 caliber firearm. The appellant and Edmundo immediately fired at the victim six (6) times, hitting him three (3) times - in the arm, in his left thigh and in his left chest.^[6] The victim expired before he could receive medical treatment.

The appellant denied the charge and claimed that he had acted in self-defense. He narrated that he was at his house watching television when the victim suddenly arrived, armed with a short firearm. The victim shouted invectives at the appellant and threatened to kill him. When efforts by the appellant to pacify the victim proved to be futile, the appellant retrieved his own firearm inside his house. A struggle for the possession of the appellant's firearm then ensued between the appellant and the victim which caused the appellant's gun to discharge three times; thus, hitting the victim.

The RTC found the prosecution's version more consistent with the physical findings that the victim was not shot at close range, in the absence of powder burns on his skin.^[7] The RTC rejected the appellant's self-defense theory in the absence of evidence of unlawful aggression. The RTC ruled that the appellant was guilty of murder, qualified by treachery and evident premeditation, given the manner and the means employed in attacking the unsuspecting victim, leaving him no time or opportunity to resist.^[8]

In due course, the appellant appealed his judgment of conviction with the CA, contending that the RTC committed reversible errors in the appreciation of the evidence, namely: (1) in giving weight and credence to the highly inconsistent and questionable testimony of the prosecution eyewitness; (2) in disregarding the justifying circumstance of self-defense; and (3) in finding that the qualifying circumstances of treachery and evident premeditation attended the killing.

The CA rejected the appellant's arguments and affirmed the RTC's decision holding that the prosecution eyewitness' account of the shooting was straightforward, categorical and without any established ill-motive. The CA also held that the eyewitness testimony was compatible with the physical evidence showing that the appellant, not the victim, started the attack. The CA agreed with the RTC that the killing was qualified by treachery since the attack was executed in a manner that rendered the victim defenseless and unable to retaliate.^[9] The CA did not rule on whether evident premeditation was present in the victim's killing.

The Issue

On the basis of the same arguments raised before the CA, the appellant questions the sufficiency of the evidence proving his guilt beyond reasonable doubt.

The Court's Ruling

We find no reversible error in the CA's decision and affirm the appellant's conviction for murder.

The Claim of Self-Defense

Self-defense as a justifying circumstance under Article 11 of the Revised Penal Code, as amended, implies the admission by the accused that he committed the acts which would have been criminal in character had it not been for the presence of circumstances whose legal consequences negate the commission of a crime. By invoking self-defense in this case, the appellant admitted that he shot the victim. With this admission, the burden of evidence shifted to the appellant to prove that he acted in accordance with the law. The appellant, in this regard, must satisfactorily prove the concurrence of the following requisites under the second paragraph of Article 11 of the Revised Penal Code, as amended, to relieve him of any criminal liability:

First, unlawful aggression;

Second, reasonable necessity of the means employed to prevent or repel

it;

Third, lack of sufficient provocation on the part of the person defending.

We find that the appellant failed to discharge this burden.

(a) *Unlawful aggression*

The existence of unlawful aggression is the basic requirement in a plea of self-defense.^[10] In other words, no self-defense can exist without unlawful aggression since there is no attack that the accused will have to prevent or repel.^[11] In *People v. Dolorido*,^[12] we held that unlawful aggression “presupposes actual, sudden, unexpected or imminent danger – not merely threatening and intimidating action. **It is present ‘only when the one attacked faces real and immediate threat to one’s life.’**” The unlawful aggression may constitute an actual physical assault, or at least a threat to inflict real imminent injury upon the accused.^[13] In case of a “threat, it must be offensive and strong, positively showing the x x x intent to cause injury.”^[14]

In this case, the requisite of unlawful aggression on the part of the victim is patently absent. The records fail to disclose any circumstance showing that the appellant’s life was in danger when he met the victim. What the evidence shows is that the victim was unarmed when he went to the house of the appellant. Likewise, there was also no evidence proving the gravity of the utterances and the actuations allegedly made by the victim that would have indicated his wrongful intent to injure the appellant.

We note that the appellant’s claim of self-defense was even disproved by the narration of his own witness, Teofilo Posadas, who came into the scene to witness the ongoing attack by the appellant on the victim. As Posadas testified:

Q Mr. Witness, how did you know Mr. Witness that it was Eligio Donato shouting at Eduardo Gonzales “Anggapo lay Balam” [You have no more bullet]?

A When Eduardo fired his gun in the air twice, ma’am.

Q Which came first Mr. Witness, Eduardo Gonzales firing his gun in the air twice or Eligio Donato shouting at Eduardo Gonzales “Anggapo lay Balam”?

A The firing in the air, ma’am.

x x x x

Q By the way Mr. Witness, you mentioned a while ago that Eduardo Gonzales fired his gun in the air twice, did you notice what kind of gun did (sic) Eduardo Gonzales used [in] firing two gunshot or two shots in the air?

A [.]22 caliber long barrel, ma’am.

Q And how did you know that Eduardo Gonzales fired a [.]22 caliber gun or a long barrel gun?

A I saw that gun before while he was using it in targeting fish and birds, ma’am.

Q So Mr. Witness did Eligio Donato and Eduardo Gonzales get near each other?

A Yes, ma'am.

Q What did they do when they got close [to] each other, Mr. Witness?

A They scuffled over the possession of the gun, ma'am.
x x x x

Q When they were scuffling over the possession of the gun, what happened Mr. Witness?

A The gun fired, ma'am.
x x x x

Q How many gun burst did you hear Mr. Witness?

A Two (2) or more, ma'am.

Q After you heard two (2) or more gun burst Mr. Witness, what happened to Eligio [Donato], if any?

A He fell down, ma'am.^[15]

The testimony of Posadas reveals that: **first**, the appellant who was armed met the victim; **second**, while at a distance, the appellant fired twice at the victim's direction; **and third**, the appellant fired at the victim when the latter tried to take away his firearm.

Posadas' testimony, taken together with the testimony of prosecution eyewitness Eduardo Rodriguez,^[16] provides a clear picture on how the unlawful aggression was initiated by the appellant, not by the victim. The unlawful aggression started when the appellant immediately fired at the victim as the latter alighted from a tricycle and continued when the appellant fired at the victim six (6) times. The assault ended when the appellant fired at the victim when the latter tried to take away his firearm.

More importantly, Posadas' testimony was even corroborated by the physical evidence that should clearly defeat the claim of unlawful aggression on the part of the victim, in that: *first*, it was only the victim who was wounded in the assault; and *second*, the physical evidence showed that the victim had three (3) gunshot wounds thereby indicating that he had already been shot by the appellant when he tried to gain possession of the appellant's firearm.

(b) Reasonable necessity of the means employed to prevent or repel the victim's attack

The second requisite of self-defense could not have been present in the absence of any unlawful aggression on the part of the victim. However, even granting that it was the unarmed victim who first acted as the aggressor, we find that the means employed by the appellant in repelling the attack - the use of a firearm, the number of times he fired at the victim and the number of gunshot wounds sustained by the victim - were not reasonably necessary. On the contrary, we find that the number of gunshot wounds reveals a clear intent to kill, not merely to repel the attack of the unarmed victim.

(c) Lack of sufficient provocation on the part of the appellant

The records disclose that the struggle between the victim and the appellant occurred **after** the appellant **fired** at the victim. In other words, the third requisite was not