

## FIRST DIVISION

[ G.R. No. 191721, January 12, 2011 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROGELIO DOLORIDO Y ESTRADA, ACCUSED-APPELLANT.**

### D E C I S I O N

**VELASCO JR., J.:**

#### **The Case**

This is an appeal from the November 27, 2009 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00575-MIN entitled *People of the Philippines v. Rogelio Dolorido y Estrada*, which affirmed the September 14, 2007 Decision<sup>[2]</sup> in Criminal Case No. 5027 of the Regional Trial Court (RTC), Branch 27 in Tandag, Surigao del Sur. The RTC found accused-appellant Rogelio Dolorido y Estrada guilty of murder.

#### **The Facts**

The charge against Dolorido stemmed from the following Information:

That on the 9<sup>th</sup> day of May 2006 at around 8:30 o'clock in the morning, more or less, at Barangay Cagdapao, Municipality of Tago, Province of Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo with evident premeditation and treachery and with intent to kill, did then and there, willfully, unlawfully, and feloniously, attack, assault and hack one, DANIEL ESTOSE, causing his instantaneous death, to the damage and prejudice of the heirs of the deceased as follows:

P70,000.00	-	as life indemnity
P10,000.00	-	as moral damage
P10,000.00	-	exemplary damages

CONTRARY TO LAW.<sup>[3]</sup>

On November 15, 2006, Dolorido was arraigned, and he pleaded "not guilty" to the crime charged.

During the pre-trial conference on January 18, 2007, Dolorido admitted that he killed the deceased-victim Daniel Estose but invoked self-defense. Likewise, the prosecution and the defense stipulated that the Joint Affidavit of Aniolito Avila and Adrian Avila (the Avilas) would constitute as their direct testimony, subject to cross-examination by the defense; and the Counter Affidavit of the Accused and the

Affidavit of Mario Jariol would also constitute as their direct testimony, subject to cross examination by the prosecution.

During the trial, the prosecution offered the testimonies of the Avilas and Loreta Estose. On the other hand, the defense presented, as its sole witness, accused-appellant Dolorido.

### **The Prosecution's Version of Facts**

The Avilas were hired laborers of the victim, Estose, tasked to harvest the coconuts in the latter's farm in Cagdapao, Tago, Surigao del Sur.<sup>[4]</sup>

On May 9, 2006, while the Avilas were walking towards the coconut plantation at around 8:30 in the morning, they saw Dolorido standing near the coconut drier of Estose, appearing very angry. After some time, Dolorido proceeded to Rustica Dolorido's coconut drier located a hundred meters away and hid behind a coconut tree.<sup>[5]</sup>

Moments later, they saw Estose on his way to his own coconut drier. When Estose passed by Rustica Dolorido's coconut drier, they saw Dolorido suddenly hack Estose twice, resulting in wounds on his arms. When Estose tried to retreat, he fell down and it was then that Dolorido stabbed him on the left portion of his chest, which caused his death. Dolorido suddenly left the place.

Afraid of Dolorido's wrath, the Avilas did not immediately proceed to the scene of the crime. It was only after 20 or so minutes that they felt it was safe to approach Estose. When they were near, they saw Estose was already dead.<sup>[6]</sup> They then waited for Estose's wife and the police.

### **Version of the Defense**

Dolorido's defense, on the other hand, consisted of the story of self-defense:

On the day of the death of the victim, Dolorido asked Estose why he was gathering Dolorido's harvested coconuts. Estose just replied, "So, what about it?" and tried to unsheathe his bolo from its scabbard.<sup>[7]</sup> Upon seeing this, Dolorido drew his own bolo and stabbed Estose. When Estose tried to wrestle for the bolo, he sustained some wounds. Afterwards, while Dolorido was pointing the bolo at Estose, the latter suddenly lunged at Dolorido, causing Estose to hit the bolo with his own chest which resulted in his death.<sup>[8]</sup> He denied the prosecutor's claim that he hid behind a coconut tree and waited for Estose to come. Thereafter, Dolorido, accompanied by one Mario Jariol, voluntarily surrendered to the Tago Police Station.

### **Rulings of the Trial and Appellate Courts**

After trial, the RTC convicted accused Dolorido. The dispositive portion of its September 14, 2007 Decision reads:

WHEREFORE, finding accused **Rogelio Dolorido y Estrada GUILTY** beyond reasonable doubt of the crime of **MURDER** qualified by treachery,

and appreciating in his favor the mitigating circumstance of voluntary surrender, without any aggravating circumstance to offset the same, the Court hereby sentences him to suffer the penalty of **Reclusion Perpetua**, to pay the heirs of deceased-victim Daniel Estose y Langres the sum of **P50,000.00** as **civil indemnity**, **P50,000** as **moral damages** and **P25,000.00** as **temperate damages**; and to pay the cost.

x x x x

SO ORDERED.<sup>[9]</sup>

On November 27, 2009, the CA affirmed *in toto* the judgment of the RTC.<sup>[10]</sup>

### **The Issues**

Accused-appellant assigns the following errors:

#### **I.**

The court a quo gravely erred in not appreciating self-defense interposed by accused.

#### **II.**

The court a quo gravely erred in convicting the accused-appellant of murder despite the failure of the prosecution to prove the elements of treachery.

#### **III.**

The court a quo gravely erred in awarding damages despite failure of the prosecution to present evidence to support their claim.

### **The Court's Ruling**

The appeal has no merit.

#### **Self-defense is absent**

In his *Brief*, accused-appellant argues that the trial court failed to consider the circumstance of unlawful aggression on the part of the victim. He contends that he only acted in self-defense, and this is the reason why he voluntarily surrendered to the authorities.

We do not agree.

In order for self-defense to be successfully invoked, the following essential elements must be proved: (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.<sup>[11]</sup>

A person who invokes self-defense has the burden of proof of proving **all** the elements.<sup>[12]</sup> However, the most important among all the elements is the element of unlawful aggression. Unlawful aggression must be proved first in order for self-defense to be successfully pleaded, whether complete or incomplete. As this Court said in *People v. Catbagan*,<sup>[13]</sup> "There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense."

In this case, we agree with the trial court that the accused-appellant failed to prove the existence of unlawful aggression. But he maintains that Estose provoked him when the latter started to unsheathe his bolo from his scabbard. Nevertheless, as aptly found by the trial court, his testimony is too incredible to be believed, viz:

Accused's plea failed to impress the Court. To be sure, his story on how the deceased was killed is too incredible to inspire belief. According to him, it was the deceased who first unsheathed his bolo but did not succeed in his attempt to fully unsheathe it because he (Accused) hacked him. Thereafter, the deceased tried to wrest Accused's bolo but was injured instead. If the deceased failed to unsheathe his bolo because Accused was able to hack him, how could the deceased then have attempted to dispossess the Accused of the latter's bolo? The truth, of course, is that the Accused waylaid the deceased, as testified to by the prosecution witnesses.<sup>[14]</sup> x x x

Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person.<sup>[15]</sup> In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury.<sup>[16]</sup> It "presupposes actual, sudden, unexpected or imminent danger - not merely threatening and intimidating action."<sup>[17]</sup> It is present "only when the one attacked faces real and immediate threat to one's life."<sup>[18]</sup> Such is absent in the instant case.

Moreover, against the positive declarations of the prosecution witnesses who testified that accused-appellant hacked Estose twice and subsequently stabbed him without any provocation, accused-appellant's self-serving and uncorroborated assertion deserves scant consideration.

Indeed, it is a well-settled rule that "a plea of self-defense cannot be justifiably entertained where it is not only uncorroborated by any separate competent evidence but is also extremely doubtful in itself."<sup>[19]</sup> Moreover, "[a]bsent any showing that the prosecution witnesses were moved by improper motive to testify against the appellant, their testimonies are entitled to full faith and credit."<sup>[20]</sup>

Therefore, absent any unlawful aggression from the victim, accused-appellant cannot successfully invoke the defense of self-defense.