

## **FIRST DIVISION**

**[ G.R. NO. 153875, August 16, 2006 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROLANDO DAGANI Y REYES AND OTELLO SANTIANO Y LEONIDA,  
ACCUSED-APPELLANTS.**

### **D E C I S I O N**

**AUSTRIA-MARTINEZ, J.:**

For review before the Court is the Decision dated June 20, 2002<sup>[1]</sup> of the Court of Appeals (CA) which affirmed the Decision of the Regional Trial Court of the City of Manila, Branch 12 (RTC), dated February 18, 1993, in Criminal Case No. 89-77467, finding the accused-appellants Otello Santiano y Leonida (Santiano) and Rolando Dagani y Reyes (Dagani) guilty of the crime of Murder.

The accusatory portion of the Information reads:

That on or about September 11, 1989, in the City of Manila, Philippines, the said accused conspiring and confederating together and mutually helping each other did then and there, willfully, unlawfully and feloniously, with intent to kill, evident premeditation and treachery, attack, assault and use of personal violence upon one ERNESTO JAVIER Y FELIX by then and there shooting him with a .38 caliber revolver, thereby inflicting upon the said ERNESTO JAVIER Y FELIX mortal gunshot wounds which were the direct and immediate cause of his death thereafter.

CONTRARY TO LAW.<sup>[2]</sup>

Upon arraignment, the appellants pleaded not guilty. Trial ensued where the prosecution adduced evidence to establish the following:

At about 4:45 in the afternoon of September 11, 1989, a group composed of Ernesto Javier (Javier), Lincoln Miran (Miran), and two other individuals had been drinking at the canteen located inside the compound of the Philippine National Railways (PNR) along C.M. Recto Avenue, Tondo, Manila. All of a sudden, appellants, who were security officers of the PNR and covered by the Civil Service Rules and Regulations, entered the canteen and approached the group. Appellant Dagani shoved Miran, causing the latter to fall from his chair. Dagani then held Javier while Santiano shot Javier twice at his left side, killing the latter.

The defense proceeded to prove their version of the facts:

Appellants testified that they were ordered by their desk officer to investigate a commotion at the canteen. Upon reaching the place, Santiano ordered his co-accused, Dagani, to enter, while the former waited outside.

Dagani approached Javier who had been striking a bottle of beer on the table. Javier then pulled out a .22 caliber revolver and attempted to fire at Dagani, but the gun failed to go off. Then suddenly, while outside the canteen, Santiano heard gunfire and, from his vantage point, he saw Javier and Dagani grappling for a .22 caliber gun which belonged to Javier. During the course of the struggle, the gun went off, forcing Santiano to fire a warning shot. He heard Javier's gun fire again, so he decided to rush into the canteen. Santiano then shot Javier from a distance of less than four meters.

Appellants invoked the justifying circumstances of self-defense and lawful performance of official duty as PNR security officers. They also argued that the prosecution failed to establish treachery and conspiracy.

The RTC rendered its Decision, the dispositive portion of which reads:

WHEREFORE, finding both accused Otello Santiano y Leonida and Rolando Dagani y Reyes guilty beyond reasonable doubt of the crime of Murder defined and punished under Art. 248, RPC, with the presence of the mitigating circumstance of voluntary surrender and granting them the benefit of [the] Indeterminate Sentence Law, both accused are hereby sentenced to each suffer an Indeterminate prison term of TEN (10) YEARS and ONE (1) DAY of *prision mayor* as minimum, to EIGHTEEN (18) YEARS and ONE (1) DAY of *reclusion temporal* x x x.

Both accused are hereby ordered to indemnify the heirs of the victim the sum of P50,000.00 as death indemnity, the sum of P31,845.00 as funeral and burial expenses, the sum of P30,000.00 as and for [sic] attorney's fees and the further sum of P1,000.00 per appearance of counsel.

Both accused shall be credited with the full extent of their preventive imprisonment. Both accused are hereby committed to the Director, National Penitentiary, Muntinlupa, Metro Manila for service of Sentence.

SO ORDERED. <sup>[3]</sup>

In brief, the RTC held that appellants failed to prove that Javier attempted to squeeze the trigger of the .22 caliber gun when he pointed it at Dagani; that during the course of the struggle for the possession of the .22 caliber gun, the danger to the life of the accused ceased to be imminent; that in grappling for the weapon, Dagani "controlled" the hands of Javier and pushed them away from his body; that the appellants failed to produce the two empty shells as physical evidence of the gunfire allegedly caused by Javier; that no points of entry or bullet markings on the walls of the canteen were shown; that, in light of these findings, no unlawful aggression was present on the part of the victim; that the appellants failed to prove that they were on official duty at the time of the incidence; that, since it was not established that Javier actually fired his gun, the injury inflicted upon him cannot be regarded as a necessary consequence of the due performance of an official duty; that the appellants were acting in conspiracy; that the qualifying circumstance of treachery attended the killing, considering that Javier had been shot while his hands were being held by Dagani and as his body was out of balance and about to fall; and that the mitigating circumstance of voluntary surrender should be appreciated in

favor of the appellants.

The appellants appealed to the CA and assigned the following errors:

I

THE LOWER COURT GRAVELY ERRED IN NOT APPRECIATING SELF DEFENSE ON THE PART OF THE ACCUSED.

II

THE LOWER COURT ERRED WHEN IT FAILED TO CONSIDER THE FACT THAT THE ACCUSED-APPELLANTS WERE IN LAWFUL PERFORMANCE OF AN OFFICIAL DUTY.

III

THE LOWER COURT GRAVELY AND SERIOUSLY ERRED IN RULING THAT THERE WAS CONSPIRACY.

IV

THE LOWER COURT GRAVELY ERRED IN FINDING THAT THE PROSECUTION WAS ABLE TO ESTABLISH BEYOND REASONABLE DOUBT THAT THE ACCUSED ARE GUILTY OF MURDER.<sup>[4]</sup>

The CA rendered its Decision, the dispositive portion of which states:

WHEREFORE, the appealed judgment of conviction is MODIFIED. Appellants are hereby sentenced to *reclusion perpetua*. The award for attorney's fees and appearance fees for counsel are hereby deleted. In all the other aspects, the appealed decision is maintained.

Let the entire records of the case be elevated to the Supreme Court for the mandated review.

SO ORDERED.<sup>[5]</sup>

The CA affirmed the findings of fact as well as the salient portions of the RTC Decision, but deleted the award of attorney's fees and the per appearance fees of counsel since, the CA reasoned, the instant case is criminal in nature which is under the control of the public prosecutor, and, additionally, the RTC failed to justify this award in the body of its Decision. And last, the CA found that the RTC erroneously applied the Indeterminate Sentence Law since the penalty for Murder, at the time of the incident, was *reclusion perpetua* which is an indivisible penalty to be imposed in its entirety, regardless of the attending mitigating circumstance of voluntary surrender.

Appellants are now before this Court submitting for resolution the same matters argued before the CA. Through their Manifestation dated February 11, 2003,<sup>[6]</sup> appellants prayed to dispense with the filing of additional briefs.

As of date, the records show that despite the efforts exerted by the surety and the responsible law officers to locate the appellants, the latter could not be found and have jumped bail.<sup>[7]</sup>

The appeal is partly meritorious.

Appellants argue that the courts a quo misappreciated the facts and erred in finding that there was no unlawful aggression on the part of the victim. They insist that the victim, Javier, had been armed with a revolver at the time he was struggling with appellant Dagani; that the former "could have easily killed the latter;" that, given the fact that Javier had been drinking, "it is quite probable for Javier to act harshly and aggressively towards peace officers such as the accused;"<sup>[8]</sup> and that Javier actually fired three shots from his .22 caliber gun.<sup>[9]</sup>

We are not convinced.

When self-defense is invoked, the burden of evidence shifts to the accused to show that the killing was legally justified. Having owned the killing of the victim, the accused should be able to prove to the satisfaction of the Court the elements of self-defense in order to avail of this extenuating circumstance. He must discharge this burden by clear and convincing evidence. When successful, an otherwise felonious deed would be excused, mainly predicated on the lack of criminal intent of the accused. Self-defense requires that there be (1) an unlawful aggression by the person injured or killed by the offender, (2) reasonable necessity of the means employed to prevent or repel that unlawful aggression, and (3) lack of sufficient provocation on the part of the person defending himself. All these conditions must concur.<sup>[10]</sup>

Unlawful aggression, a primordial element of self-defense, would presuppose an actual, sudden and unexpected attack or imminent danger on the life and limb of a person – not a mere threatening or intimidating attitude<sup>[11]</sup> – but most importantly, at the time the defensive action was taken against the aggressor.<sup>[12]</sup> To invoke self-defense successfully, 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.<sup>[13]</sup>

In the instant case, the assertions that it was "quite probable" that Javier, during the course of the struggle for the firearm, "could have easily killed" the appellants are uncertain and speculative. There is aggression in contemplation of the law only when the one attacked faces real and immediate threat to one's life. The peril sought to be avoided must be imminent and actual, not just speculative.<sup>[14]</sup>

To sum up the matter, we quote the findings of the CA:

The defense was unable to prove that there was unlawful aggression on the part of Javier. They were unable to present evidence that the victim actually fired his gun. No spent shells from the .22 caliber pistol were found and no bullets were recovered from the scene of the incident.

Javier also tested negative for gunpowder residue. Moreover, the trial court found appellant Dagani's account of the incident to be incredible and self-serving. In sum, the defense presented a bare claim of self-defense without any proof of the existence of its requisites.<sup>[15]</sup>

Even if it were established that Javier fired his gun as the appellants so insist, the imminence of the danger to their lives had already ceased the moment Dagani held down the victim and grappled for the gun with the latter. After the victim had been thrown off-balance, there was no longer any unlawful aggression that would have necessitated the act of killing.<sup>[16]</sup> When an unlawful aggression that has begun no longer exists, the one who resorts to self-defense has no right to kill or even to wound the former aggressor.<sup>[17]</sup> When Javier had been caught in the struggle for the possession of the gun with appellant Dagani, the grave peril envisaged by appellant Santiano, which impelled him to fire at the victim, had then ceased to a reasonable extent,<sup>[18]</sup> and undoubtedly, Santiano went beyond the call of self-preservation when he proceeded to inflict the excessive and fatal injuries on Javier, even when the alleged unlawful aggression had already ceased.<sup>[19]</sup>

The second element of self-defense demands that the means employed to neutralize the unlawful aggression are reasonable and necessary. It is settled that reasonable necessity of the means employed does not imply material commensurability between the means of attack and defense. What the law requires is rational equivalence.<sup>[20]</sup> The circumstances in their entirety which surround the grappling of the firearm by Dagani and Javier, such as the nature and number of gunshot wounds sustained by the victim<sup>[21]</sup> which amounted to two fatal wounds,<sup>[22]</sup> that Dagani was able to restrain the hands of Javier and push them away from his body,<sup>[23]</sup> that Dagani was larger than Javier and had finished Special Weapons and Tactics (SWAT) hand-to-hand combat training,<sup>[24]</sup> and Javier, as admitted by the appellants, was inebriated at the time of the incident,<sup>[25]</sup> do not justify appellant Santiano's act of fatally shooting the victim twice.<sup>[26]</sup>

All things considered, the appellants' plea of self-defense is not corroborated by competent evidence. The plea of self-defense cannot be justifiably entertained where it is not only uncorroborated by any separate competent evidence but is in itself extremely doubtful.<sup>[27]</sup> Whether the accused acted in self-defense is a question of fact. Like alibi, the affirmative defense of self-defense is inherently weak because, as experience has demonstrated, it is easy to fabricate and difficult to disprove.<sup>[28]</sup> This Court, therefore, finds no reversible error on the part of the courts *a quo* in rejecting the claim of self-defense.

Appellants set up the defense that they were in the lawful performance of their official duties. They specifically aver that they had been ordered by their desk officer to proceed to the canteen in response to a telephone call stating that there was a group "creating trouble;" that they were in the call of duty and exercising their functions and responsibilities as members of the PNR Civil Security Office to preserve peace and order and protect the lives and property in the PNR Compound;<sup>[29]</sup> and that, invoking jurisprudence, as security officers in the performance of duty, like the police, they must stand their ground and overcome the opponent, and the force that may be exerted must differ from that which ordinarily may be offered in