

THIRD DIVISION

[G.R. No. 137296, June 26, 2003]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DIONISIO VICENTE Y QUINTO, ACCUSED-APPELLANT.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Retaliation is different from self-defense. In retaliation, the aggression that was begun by the injured party already ceased to exist when the accused attacked him. In self-defense, the aggression was still existing when the aggressor was injured by the accused.^[1]

The present case is a clear illustration of retaliation and self-defense.

On appeal is the Decision^[2] dated December 15, 1998 of the Regional Trial Court, Branch 42, Dagupan City, in Criminal Case No. 98-02266-D finding Dionisio Q. Vicente, appellant, guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of the victim, Manuel C. Quinto, Jr., the amount of P50,000.00 as civil indemnity, P88,000.00 as actual damages, P10,000.00 as attorney's fees, P50,000.00 as moral damages and costs of suit.

In the Information^[3] dated July 15, 1998, appellant was charged with the crime of murder committed as follows:

"That on or about May 30, 1998 in the evening thereof, at barangay Gueguesangen, municipality of Mangaldan, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, with intent to kill, with treachery and evident premeditation, did then and there, wilfully, unlawfully and feloniously, attack and stab **MANUEL C. QUINTO, JR.**, causing his death shortly thereafter due to '**CARDIORESPIRATORY ARREST SECONDARY TO HYPOVOLEMIC SHOCK DUE TO A STAB WOUND**' as per Certificate of Death issued by Dr. Ophelia Rivera, M.D., Rural Health Officer, Mangaldan, Pangasinan, to the damage and prejudice of the legal heirs of said deceased Manuel C. Quinto, Jr. and other consequential damages relative thereto.

"**CONTRARY** to Article 248 of the Revised Penal Code, as amended by RA 7659."

Upon arraignment, appellant pleaded not guilty.^[4] He invoked self-defense, thus, a reverse trial ensued. Appellant, Hilda Vicente, Linda Vicente and Dr. Ophelia Rivera testified for the defense. The prosecution presented as its witnesses Jose Noe, Sr.,

Ronald Terte, and Juliana Quinto.

The version of the defense is as follows:

On May 30, 1998, at 8:30 o'clock in the evening, while appellant was having supper in his house at Gueguesangen, Mangaldan, Pangasinan, his brothers-in-law, Anoy and Sonny, quarreled. Anoy was abrasively scolding Sonny for smoking and gambling. This caused the latter to howl at the top of his voice. The victim, then Chairman of the Sangguniang Kabataan, responded to Sonny's unusual cry. He entered appellant's house and suddenly pushed Anoy, causing him to fall to the floor. Appellant pacified the victim saying, *"don't mind them because they are brothers and Anoy is only advising Sonny."*^[5] The victim felt insulted by such remark and said, *"Is that it? I am insulted. I regret coming here."*^[6] Thus, he went home and got a steel pipe. Upon his return, he hit appellant at his upper left arm^[7] and shouted at him, *"You are shit, vulva of your mother, I will kill you today."*^[8] But appellant was able to seize the steel pipe from the victim, prompting the latter to retreat and go home.

Present during the squabble were appellant's wife Linda and sister Hilda. Linda advised appellant not to mind the victim, while Hilda called Kagawad Elias Fernandez. Appellant reported to the latter the unpleasant incident. While they were talking outside the house,^[9] the victim passed by.^[10] He approached Kagawad Fernandez and invited him to go to the dance hall.^[11] Then he tapped appellant's right shoulder,^[12] causing him to be pushed a "little bit" backward. Without any warning, the victim pulled out a knife and tried to stab appellant, shouting, *"I will see to it that I will kill you tonight."*^[13] Appellant held the victim's wrist and they grappled for the possession of the knife.^[14] While the knife was pointed at the victim, appellant accidentally stabbed him.^[15]

Appellant surrendered to Kagawad Fernandez who, in turn, brought him to the police station.

Dr. Ophelia Rivera testified that two days after the incident, appellant was brought to her clinic for medico legal purposes. He had a hematoma on his upper left arm.^[16] He was also complaining of pain in the head although there was no external indication of injury.

The witnesses for the prosecution presented a different story.

Ronald Terte narrated that on May 30, 1998, at around 9:30 o'clock in the evening, he was in the house of the victim at Gueguesangen, Mangaldan, there being a barrio fiesta.^[17] They heard unusual cries from the neighborhood. So they proceeded to appellant's house and found that his brothers-in-law, Anoy and Sonny, were quarrelling.^[18] The victim tried to pacify Anoy.^[19] This infuriated appellant, thus, he drew a "rambo knife" and aimed it at the victim. Threatened, he and Ronald immediately went home.

Thereafter, appellant followed the victim to his house and challenged him to a fight. The victim could only answer back, *"If you want we will rent a box ring and we will*

fight." [20]

At around 9:45 o'clock in the evening, the victim and Ronald Terte returned to the house of appellant as the former intended to talk to him. On their way, they saw appellant conversing with Kagawad Fernandez. The victim greeted [21] Kagawad Fernandez who inquired, "Are we going to the dance hall?" [22] The victim answered in the affirmative. Then as a gesture of reconciliation, he extended his hand to appellant. However, appellant suddenly drew a knife and stabbed the victim in the chest. [23] The victim uttered, "Pare, I was hit." [24] Ronald immediately brought him to the hospital but he was pronounced dead on arrival.

Jose Noe, Sr., a 64-year old resident of Gueguesangen, Mangaldan, testified that on the same date and time, he saw appellant and Kagawad Fernandez engaged in a serious conversation. [25] He heard appellant saying, he would kill the victim. [26] At that time, the victim and his companion passed by. Upon seeing Kagawad Fernandez, the victim greeted him, "Kagawad, you are here." [27] Kagawad Fernandez then answered "yes." Then the victim advised appellant to "forget what had happened." [28] At this point, appellant abruptly drew his knife and stabbed the victim in the chest. [29]

Juliana C. Quinto, the victim's mother, testified that she spent P20,500.00 for his funeral services, [30] P14,000.00 for his tomb, [31] P50,000.00 for his internment, [32] and P2,000.00 for his autopsy. [33] When asked what she felt over the death of her son, she said that she always cried and suffered anxiety. [34]

On December 15, 1998, the trial court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, the accused **DIONISIO VICENTE** is hereby found guilty beyond reasonable doubt of Murder as charged and he is hereby sentenced to suffer the penalty of *reclusion perpetua*. In addition, he has to indemnify the private offended party the amount of P50,000.00 for the death of Manuel Quinto, Jr. He is likewise ordered to pay P20,500.00 for funeral services, P10,000.00 for the construction of the tomb, P4,000.00 for the washed out of the tomb, P50,000.00 for the amount spent for the vigil, P2,000.00 for the autopsy of the cadaver of Manuel Quinto, Jr., P500.00 for the funeral mass, and P1,000.00 for the cemetery lot, or a total of P88,000.00 as actual damages, P10,000.00 as attorney's fees, and P50,000.00 as moral damages, plus costs of suit. The period under which the accused has been placed under detention is to be deducted against his sentence since *reclusion perpetua*, under RA 7659, has a range of 20 years and 1 day to 40 years.

"SO ORDERED." [35]

In finding the presence of treachery, the trial court ratiocinated:

"It is an oft-repeated rule that treachery to be considered as a qualifying circumstance as charged in the information should be present at the inception of the incident. This rule, however, admits of an exception.

When there is a second stage of the incident as in this case, treachery should be considered as a qualifying aggravating circumstance if used as a means to insure the success of an attack against a fellow protagonist during the said second stage of the incident. Therefore, the public prosecutor who charged the accused with murder was correct in contrast to the recommendation of the Investigating Judge of the lower court who conducted the preliminary investigation x x x."^[36]

Unable to accept the verdict, appellant comes before us interposing the following assignments of error:

"I

THE COURT A QUO ERRED IN NOT GIVING CREDENCE TO THE ACCUSED'S CLAIM OF SELF-DEFENSE;

II

THE COURT A QUO ERRED IN FINDING THE PRESENCE OF THE QUALIFYING CIRCUMSTANCE OF TREACHERY IN THIS CASE; AND

III

ASSUMING ARGUENDO THAT THE ACCUSED IS LIABLE FOR THE KILLING OF THE VICTIM, THE COURT A QUO ERRED IN NOT FINDING THE ACCUSED GUILTY OF HOMICIDE ONLY AND NOT OF MURDER."^[37]

Appellant argues that his claim of self-defense is buttressed by the fact that he immediately surrendered to the authorities after the incident and that the victim sustained only one stab wound. Also, he stresses that if a crime was indeed committed, it is only homicide because the attack was frontal and that a heated altercation preceded the stabbing. Lastly, he contends that since he sustained an injury in his upper left arm, as confirmed by Dr. Rivera, it follows that he is not the unlawful aggressor.

The Solicitor General counters that appellant's claim of self-defense is weak and unfounded because: *first*, as between appellant and the victim, it was the former who had more reason to harbor ill-feelings; *second*, the victim's gesture of tapping appellant's shoulder was a sign of goodwill; *third*, the victim was stabbed in the chest indicating an intent to kill on the part of appellant; *fourth*, appellant did not claim self-defense when he surrendered to Kagawad Fernandez and the police; and *fifth*, he failed to present the knife to the authorities. The Solicitor General likewise maintains that treachery was present because there was an element of surprise in the attack.

When the accused interposes self-defense, he must prove that: **(1)** he is not the unlawful aggressor; **(2)** there was lack of sufficient provocation on his part; and **(3)** he employed reasonable means to prevent or repel the aggression.^[38] Although all these elements must concur, self-defense is perched on proof of unlawful aggression on the part of the victim. Without it, there can be no self-defense,

complete or incomplete.

Under the circumstances here, we are convinced that appellant is the unlawful aggressor. As maybe gleaned from the narrations of the witnesses, the incident has two stages. The first stage took place in appellant's house where the victim felt insulted when rebuked by the appellant for interfering in a family squabble. This prompted the victim to hit appellant's upper left arm with a steel pipe. Afterwards, the victim left.

The second stage began when the victim met appellant and Kagawad Fernandez along the road. At this time, the victim wanted to reconcile with the appellant. **In fact, he offered appellant a handshake, telling him to forget what happened.** Unfortunately, appellant, who had not yet shaken off his ire against the victim, stabbed the latter.

While admittedly, the victim was the unlawful aggressor during the first stage of the incident, however, he ceased to be in the second stage. The lapse of an appreciable time interval had cooled off his head as shown by the fact that he was trying to shake appellant's hand and telling him, "*forget what happened.*"

Unlawful aggression presupposes an actual, sudden and unexpected attack, or imminent danger thereof.^[39] For one to be considered the unlawful aggressor, he must be shown to have exhibited external acts clearly showing his intent to cause and commit harm to the other.^[40] In the case at bar, the prosecution witnesses belied any act of aggression on the part of the victim. The evidence shows he was unarmed and had no idea of the impending attack against him.

Certainly, the victim's act of aggression during the first stage of the incident does not justify appellant's conduct during the second stage. **Settled is the rule that when unlawful aggression ceases, the defender has no longer any right to kill or wound the former aggressor, otherwise, retaliation, and not self-defense is committed.**^[41]

Appellant implores us to give credence to the testimonies of the defense witnesses. We are not swayed. It is a well-settled principle that when it comes to the matter of credibility, the appellate courts generally do not overturn the findings of the trial courts. The latter are in a best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, demeanor and behavior in court.^[42] We see no reason to deviate from this principle.

With marked significance is the fact that there appears no motive on the part of the prosecution witnesses Ronald Terte and Jose Noe, Sr. to falsely testify against appellant. On his part, appellant proffered no explanation why these witnesses implicated him. Worse, while the prosecution presented disinterested witnesses, the defense called to the witness stand only appellant's wife and sister. Though there is no presumption that a testimony of a relative is tainted, we cannot but cast an eye of suspicion on the testimonies of appellant's close relatives. It is the natural tendency of a person to testify for and not against his relatives. In *People vs. Ching*,^[43] we ruled: