

FIRST DIVISION

[G.R. No. 152604, September 18, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LEONCIO
PEDRIGAL Y SIMBALLANA @ "BAKLA", APPELLANT.**

DECISION

YNARES-SANTIAGO, J.:

In Criminal Case No. 5247-G, appellant Leoncio Pedrigal y Simballana @ "Bakla" was charged before the Regional Trial Court of Gumaca, Quezon, Branch 61, with murder in an information^[1] which reads:

That on or about the 18th day of December 1995, at Sitio Badajos, Barangay Butanyog, Municipality of Mulanay, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, with intent to kill, armed with a small bolo (itak-itakan), with treachery, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said weapon one Richard Napeñas, thereby inflicting upon the latter wounds on different parts of his body which directly caused his death.

That the accused attacked and stabbed said Richard Napeñas suddenly and unexpectedly without giving the latter any opportunity to defend himself or to escape.

Appellant pleaded "not guilty". Trial on the merits then ensued.

At around 5:30 in the afternoon of December 18, 1995, in Barangay Butanyog, Mulanay, Quezon, Crisanta Carsola overheard Juana Pedrigal telling her son, appellant Leoncio Pedrigal, "*Bakla, parang awa mo na, tulungan mo si Pepe at nilolooban ni Ricky.*" Appellant allegedly told his mother not to worry as he will take care of the matter. Carsola relayed what she heard to Felino Rosas, a barangay captain. Later in the afternoon, she joined the victim, Ricky Napeñas, and Leonora Rejano in front of their houses where they partook of coffee and engaged in small talk. Appellant suddenly appeared from out of the dark and repeatedly stabbed Napeñas.

Carsola immediately reported the matter to Rosas, and together they rushed to the scene where they saw appellant holding a small bolo while astride Napeñas. They disarmed appellant and brought Napeñas to the hospital, but he expired on the way.

Dr. Heriberto Morales, Municipal Health Officer of Mulanay, Quezon, conducted the autopsy and concluded that Napeñas died of hemorrhagic shock due to multifarious wounds. The abdominal wound which caused the small intestine to spill out, was the most fatal.^[2]

Appellant denied the charge against him. He claimed that he was on his way to Barangay Butanyog when Napeñas stabbed him with a *tres cantos* ice-pick. He drew his small bolo and engaged the victim in a fight. After about thirty minutes, they both fell down in exhaustion. Brgy. Capt. Rosas arrived and disarmed them. He was brought to a hospital in Catanauan for medical treatment. He was issued a medical certificate by the hospital but the same was in his parents' possession.

The trial court gave credence to the prosecution's evidence and rendered a decision,^[3] the dispositive portion of which reads:

WHEREFORE, based on the foregoing premises, the Court finds the accused guilty beyond reasonable doubt of the crime of Murder punished and defined under Art. 248 of the Revised Penal Code and therefore sentences him to suffer the penalty of *RECLUSION PERPETUA* and to pay the heirs of the victim Ricky Napeñas P50,000.00 as indemnity for damages and to pay P20,000.00 as actual damages, plus costs of the suit.

Hence, this appeal. Appellant insists that he killed Napeñas in self-defense.^[4] Nonetheless, even assuming that he is found guilty, he submits that he should only be held liable for homicide and not murder.^[5]

In invoking self-defense, appellant is deemed to have admitted that he killed the victim, and the burden of evidence is shifted on him to prove that he did not commit unlawful aggression.^[6] The question of whether appellant acted in self-defense is essentially a question of fact. In self-defense, unlawful aggression is a primordial element.^[7]

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.^[8] Appellant failed to prove these elements.

Appellant alleges that he attacked Napeñas because the latter was suspected of robbing Pepe Briones, his brother-in-law. This, however, fails to qualify as unlawful aggression committed against appellant.

Significantly, the most telling proof that appellant did not act in self-defense was the number of wounds he inflicted on Napeñas. Napeñas suffered seven (7) stab wounds, one of which proved to be fatal. The nature, number and location of the wounds sustained by the victim belie the assertion of self-defense since the gravity of said wounds is indicative of a determined effort to kill and not just to defend.^[9]

In the alternative, appellant claims that he should have been convicted only of homicide, instead of murder, because of the absence of the qualifying circumstance of treachery. He argues that it is not sufficient to show that the attack was sudden to establish treachery. He cites *People v. Recepcion*,^[10] where it was held that for treachery to be appreciated, it must also be proved that the malefactor must have employed means, method or manner of execution that would ensure his safety from retaliatory act of the victim; and that such means, method or form of execution are