

## FIRST DIVISION

[ G.R. No. 156567, November 27, 2003 ]

**JOSE RIMANO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,  
RESPONDENT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the December 16, 2002 decision<sup>[1]</sup> of the Court of Appeals in CA- G.R. CR No. 17838 which modified the penalty imposed on petitioner Jose Rimano for the crime of homicide in Criminal Case No. 3597 and frustrated homicide in Criminal Case No. 3595.<sup>[2]</sup>

Petitioner was originally charged in three separate informations for the crimes of homicide and two counts of frustrated homicide. Upon arraignment on September 7, 1992, he pleaded not guilty<sup>[3]</sup> to all the charges against him. After trial, the court *a quo* found him guilty beyond reasonable doubt of homicide in Criminal Case No. 3597 and of two counts of frustrated homicide in Criminal Case Nos. 3578 and 3595. On appeal to the Court of Appeals, the latter acquitted petitioner in Criminal Case No. 3578 for frustrated homicide and affirmed with modification his convictions in Criminal Case No. 3597 for homicide and in Criminal Case No. 3595 for frustrated homicide. Hence, the instant petition refers to his conviction insofar as Criminal Case No. 3597 and Criminal Case No. 3595 are concerned.

The information in Criminal Case No. 3597 for homicide, reads:

That on or about the 16th day of October 1991, in the evening, in ... Poblacion, Municipality of Malinao, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above- named accused, while armed with a deadly weapon, consisting of a knife, without justifiable cause and with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and stab one NESTOR IMPORTADO, thereby inflicting upon the latter physical injuries, to wit:

Stabbed Wounds:

- (a) Right chest with moderate hemathorax at two (02) points
- (b) Right upper quadrant, left wrist two (02) points, right back at one (01) point, neck

Cause of Death:

Massive Hemorrhage due to multiple wound with penetration at the liver,

gall bladder, small intestine at many points, diaphragm right.

as per Post Operative Findings issued by Dr. Reynaldo P. Sucgang, Jr. M.D., Medical Specialist 1, of Dr. Rafael S. Tumbokon Memorial Hospital, Kalibo, Aklan, attached hereto as annex "A" and made an integral part of this information which injuries caused the death of said NESTOR IMPORTADO.

That as a consequence of the criminal acts of the accused, the heirs of the deceased NESTOR IMPORTADO suffered actual and compensatory damages in the amount of FIFTY THOUSAND PESOS (P50,000.00).

CONTRARY TO LAW.<sup>[4]</sup>

Criminal Case No. 3595 (frustrated homicide) -

That on or about the 16th day of October 1991, in the evening, in ... Poblacion, Municipality of Malinao, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above- named accused, while armed with a knife, with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and stab one ISAIAS IBARDOLASA,<sup>[5]</sup> JR., thereby inflicting upon the latter physical injury, to wit:

Stabbed wound left back with massive hemathorax left.

as per Medico-Legal Report on Physical Injuries issued by Dr. Reynaldo P. Sucgang, Medical Specialist I of the Dr. Rafael S. Tumbokon Memorial Hospital, Kalibo, Aklan, hereto attached and an integral part hereof, the accused having thus performed all the acts of execution which would have produced the crime of Homicide as a consequence, but which, nevertheless, did not produce it by reason of causes independent of the will of the accused, that is, the timely and able medical assistance rendered to said ISAIAS IBARDOLASA, JR., which prevented his death.

That by reason of the criminal acts of the accused, ISAIAS IBARDOLASA, JR., suffered actual and compensatory damages in the amount of P20,000.00.

CONTRARY TO LAW.<sup>[6]</sup>

The facts as found by the Court of Appeals are as follows:

At around 8:30 in the evening of October 16, 1991, Nelson Importado, suddenly attacked petitioner with a knife in front of a billiard hall at the corner of Sto. Rosario Street and Roxas Avenue, Malinao, Aklan. The area was well illuminated by a fluorescent lamp. In the process of grappling for the possession of the knife, petitioner was able to get hold thereof and stabbed Nelson twice. The latter retreated to the billiard hall, 8 meters away from petitioner.<sup>[7]</sup> Thereafter, Nestor Importado, brother of Nelson, rushed towards the petitioner and boxed him, who retaliated by delivering successive stabbing blows which landed at the frontal portion of Nestor's body.<sup>[8]</sup> At this point, Isaias Ibardalosa, Jr., tried to separate the

two. When Nestor turned his back, petitioner stabbed him. The former was able to flee while Isaias and the petitioner wrestled. Shortly thereafter, they fell on the ground with Isaias on top of the petitioner. Petitioner was facing up and pinned by Isaias on the shoulders. But since petitioner's hands were free, he was able to stab Isaias at the back. Then, petitioner scampered away towards Malinao Elementary School.<sup>[9]</sup> The stabbing of Nestor and Isaias was witnessed by Froilan Sucro from the window of his house, 5 meters away from the victims.<sup>[10]</sup>

Dr. Victor Sta. Maria, who interpreted the Post Operative Findings on the deceased Nestor Importado, testified that the latter sustained six wounds, <sup>[11]</sup> thus -

- (a) right chest with moderate hemathorax at two (2) points;
- (b) right upper quadrant, left wrist two (02) points, right back at one (01) point, neck.<sup>[12]</sup>

On the other hand, the Medico Legal Report states that Isaias Ibardalosa, Jr. sustained a single "stabbed wound left back."<sup>[13]</sup>

Invoking self-defense, petitioner testified that at around 8:30 p.m. of October 16, 1991, he and some of his students went to the police station of Malinao, Aklan, to report an assault on one of his baseball players.<sup>[14]</sup> On their way back to their sleeping quarters at Malinao Elementary School, they passed by a group having a drinking spree in front of a billiard hall. Petitioner's students were walking about 8 meters ahead of him.<sup>[15]</sup> He proceeded and saw a man standing in the middle of the road, whom he later learned was the deceased Nestor Importado. Petitioner greeted Nestor, "Good evening, let us go to sleep now."<sup>[16]</sup> The latter did not answer. He noticed a knife in Nestor's right hand. The latter suddenly rushed towards him and tried to stab him. Petitioner, using both his hands, grabbed Nestor's right hand and placed Nestor's arms on his shoulder with his back facing him.<sup>[17]</sup> While they were wrestling for the possession of the knife, Nelson Importado, <sup>[18]</sup> brother of Nestor, came and boxed petitioner in the face.<sup>[19]</sup> Nelson delivered another fist blow but he was accidentally stabbed by the knife which was still in the hands of Nestor. Nelson fell but was able to stagger towards the billiard hall.<sup>[20]</sup> As petitioner and Nestor struggled for the possession of the knife, Isaias Ibardalosa, Nestor's *compadre*,<sup>[21]</sup> boxed petitioner on the right eye. At this instant, petitioner got hold of the knife and swung it 2 or 3 times hitting Nestor who was behind him and pulled his collar.<sup>[22]</sup> However, the knife was thrown away from his hand by Isaias. Petitioner kicked Isaias but somebody hit him causing him to fall to the ground face up. <sup>[23]</sup> Isaias immediately pinned him down, <sup>[24]</sup> holding his two arms.<sup>[25]</sup> While they were in that position, Nelson<sup>[26]</sup> came back and delivered 2 stabbing blows. The first thrust hit Isaias who was on top of petitioner and the other one hit the ground. Petitioner was able to free himself and he ran towards the Malinao Elementary School.<sup>[27]</sup> The next day, he presented himself to the authorities at Camp Pastor Martelino in Kalibo, Aklan.<sup>[28]</sup>

After trial on the merits, the trial court rendered a decision on November 23, 1994, the dispositive portion thereof, reads:

WHEREFORE, the accused Jose Rimano is hereby sentenced in Criminal Case No. 3597 to suffer the penalty of imprisonment for eight (8) YEARS and ONE day of prision mayor as minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal as maximum, and to indemnify the heirs of the victim Nestor Importado FIFTY THOUSAND PESOS (P50,000.00), and to pay the costs.

The accused Jose Rimano is hereby sentenced in Criminal Case No. 3595 to suffer the penalty of imprisonment for TWO (2) YEARS, FOUR MONTHS and ONE (1) DAY of prision correccional as minimum, to EIGHT (8) YEARS and ONE (1) DAY of prision mayor as maximum, and to pay the victim Isaias Ibardalosa, Jr., ... actual damage[s] in the amount of TWENTY-TWO THOUSAND, EIGHTY-EIGHT PESOS & TWENTY-EIGHT CENTAVOS (P22, 088.28), and to pay the costs.

The accused Jose Rimano is hereby sentenced in Criminal Case No. 3578 to suffer the penalty of imprisonment for TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional as minimum, to EIGHT (8) YEARS and ONE (1) DAY of prision mayor as maximum, and to pay the costs.

SO ORDERED.<sup>[29]</sup>

On appeal, the Court of Appeals acquitted petitioner of frustrated homicide in Criminal No. 3578, after finding that he acted in legitimate self-defense when he stabbed Nelson Importado. His convictions in Criminal Case No. 3597 for homicide and in Criminal Case No. 3595 for frustrated homicide were, however, affirmed with modification. The decretal portion thereof states:

WHEREFORE, foregoing premises considered and pursuant to applicable laws and jurisprudence on the matter and evidence on hand, the instant appeal is hereby partly granted. The assailed judgment is hereby modified as follows:

In Criminal No. 3578, accused-appellant is hereby acquitted of the crime charged.

In Criminal Case No. 3595, accused-appellant Jose Rimano's prison term is reduced to six (6) MONTHS of *arresto mayor* as minimum to TWO (2) years, FOUR (4) months and ONE (1) DAY of *prision correccional* as maximum.

In Criminal Case No. 3597, appellant's prison term is reduced to TWO (2) years, FOUR (4) MONTHS and ONE (1) DAY of *prision correccional* as minimum to EIGHT (8) years and ONE (1) day of *prision mayor* as maximum.

All other aspects of the decision are AFFIRMED. No Costs.

SO ORDERED.<sup>[30]</sup>

Hence, the instant petition based on the following assignment of errors:

A.

FOR CRIMINAL CASE NO. 3597, THE COURT OF APPEALS COMMITTED A PALPABLE ERROR AND GRAVE MISAPPREHENSION OF FACTS IN NOT LIKEWISE ACQUITTING PETITIONER OF THE CHARGE OF HOMICIDE BECAUSE CONTRARY TO ITS FINDING, PETITIONER EMPLOYED REASONABLE MEANS TO REPEL THE UNPROVOKED ATTACK AND UNLAWFUL AGGRESSION OF NESTOR IMPORTADO WHO WAS ARMED WITH A BLADED WEAPON.

B.

FOR CRIMINAL CASE NO. 3595, THE COURT OF APPEALS COMMITTED A PALPABLE ERROR AND GRAVE MISAPPREHENSION OF FACTS IN NOT LIKEWISE ACQUITTING PETITIONER OF THE CHARGE OF FRUSTRATED HOMICIDE BECAUSE CONTRARY TO ITS FINDING, PETITIONER EMPLOYED REASONABLE MEANS TO REPEL THE UNPROVOKED ATTACK OF ISAIAS IBARDALOZA, JR. WHO JOINED THE UNRELENTING AND VICIOUS ATTACK INITIATED BY THE IMPORTADO BROTHERS.

C.

ONLY ASSUMING ARGUENDO THAT PETITIONER MAY BE CREDITED WITH THE PRIVILEGED MITIGATING CIRCUMSTANCE OF INCOMPLETE SELF-DEFENSE FOR CRIMINAL CASE NO. 3597, THE COURT OF APPEALS COMMITTED A PALPABLE ERROR IN NOT REDUCING AND/OR LOWERING THE PENALTY BY TWO DEGREES PURSUANT TO THE HONORABLE COURT'S RULING IN TORRES VS. SANDIGANBAYAN, 143 SCRA 139, 145 [1986] WHICH IS APPLICABLE TO PETITIONER.

D.

ONLY ASSUMING ARGUENDO THAT PETITIONER MAY BE CREDITED WITH THE PRIVILEGED MITIGATING CIRCUMSTANCE OF INCOMPLETE SELF-DEFENSE FOR CRIMINAL CASE NO. 3595, THE COURT OF APPEALS COMMITTED A PALPABLE ERROR IN NOT REDUCING AND/OR LOWERING THE PENALTY BY TWO DEGREES PURSUANT TO THE HONORABLE COURT'S RULING IN TORRES VS. SANDIGANBAYAN, 143 SCRA 139, 145 [1986] WHICH IS APPLICABLE TO PETITIONER. [31]

When an accused pleads self-defense, he thereby admits authorship of the crime. Consequently, the burden of proving his guilt, which lies upon the prosecution, is shifted to him. He must prove by clear and convincing evidence the elements of self-defense, to wit: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) lack of sufficient provocation on the part of the person defending himself.[32] Unlawful aggression is a condition *sine qua non* for upholding the justifying circumstance of self-defense. Unless the victim has committed unlawful aggression against the other, there can be no self-defense, complete or incomplete, on the part of the latter. If there is nothing to prevent or repel, the other two requisites of self-defense will have no basis.[33]

In the case at bar, we find no error in the findings of the Court of Appeals that unlawful aggression existed and that the same came from the Importado brothers and Isaias Ibardalosa, Jr. Evidence shows that Nelson Importado was the first to attack petitioner with a knife and that the latter was able to get hold of said weapon