

SECOND DIVISION

[G.R. No. 138612, November 11, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. PERCIVAL GONZA
Y BORRAL, APPELLANT.**

D E C I S I O N

CALLEJO, SR., J.:

Before us on appeal is the Decision^[1] dated December 14, 1998 of the Regional Trial Court (RTC) of Bulan, Sorsogon, Branch 65, in Criminal Case No. 116, finding appellant Percival Gonza guilty beyond reasonable doubt of murder for the killing of Virgilio Mortega, and sentencing him to suffer the penalty of *reclusion perpetua*, and to indemnify the heirs of the victim P50,000 as actual damages, P50,000 as indemnity, and P50,000 as moral damages.

It was August 16, 1996, and Virgilio Mortega was attending the second day of the wake of his kin, Ramil Mortega. Singing all night long, Virgilio had no inkling that it would be his last. Mercilessly stabbed to death by Percival Gonza, he breathed his last at the age of forty-two, leaving behind a wife and six children. The prosecution cries murder; Percival says it was a desperate act of self-preservation.

The Information filed on October 7, 1996, charged Percival with murder committed as follows:

That on or about the 16th day of August, 1996 at around 11:00 o'clock in the evening or thereafter, at Barangay Caditaan, Municipality of Magallanes, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a fan knife, with intent to kill and with treachery, did then and there, wilfully, unlawfully and feloniously, attack, assault and stab one Virgilio Mortega y Villa, inflicting upon the latter serious injuries which caused his instantaneous death, to the damage and prejudice of his legal heirs.

CONTRARY TO LAW.^[2]

Upon arraignment on December 9, 1996, Percival, with the assistance of a counsel *de oficio*, pleaded not guilty to the indictment.^[3] Trial thereafter ensued.

The Evidence of the Prosecution-^[4]

In the evening of August 16, 1996, Percival Gonza, Virgilio Mortega, and other condolers were at the house of Catalino Mortega in *Barangay Caditaan*, Magallanes, Sorsogon, ^[5] attending the wake of Catalino's son, Ramil.^[6] To while away their time, Percival, Virgilio's third cousin and Catalino's brother-in-law, and a handful of condolers, engaged themselves in drinking and singing in a makeshift tent just

outside Catalino's house, and a *kapihan* (coffee shop).^[7]

When the condolers finished drinking at around 11:00 p.m., they transferred to the kitchen in the *kapihan* where Catalino and his sister Edina Dimaano served them coffee.^[8] Virgilio continued singing.^[9] Not long after, Percival decided to go home.^[10] Before leaving, however, he bade Catalino goodnight. Catalino was then at the *kapihan* fixing an electric fan.^[11] Virgilio also decided to leave. As Percival exited from the *kapihan*, Virgilio followed him.^[12] Suddenly, Percival turned around and repeatedly stabbed Virgilio with his fan knife.^[13] Virgilio backed away, towards the entrance of the *kapihan*, but Percival pursued him and there finished him off with three more successive stabs.^[14] Virgilio fell to the ground and died shortly thereafter.^[15]

Catalino and Edina could only watch the ghastly incident in horror. Catalino pulled himself together and lunged at Percival, in an effort to subdue him. They fell to the ground, with Catalino on top of Percival. As they grappled for the possession of the knife, Catalino shouted for help. Pedro Goloso and Joseph Hental responded and wrested the knife from Percival. Thereafter, they released Percival and allowed him to stay at the *kapihan's* kitchen. In the meantime, Catalino reported the incident to their *barangay* captain, Apolinario Gentolizo, who, upon arrival at the scene of the crime, took custody of Percival.^[16]

The next morning, Dr. Irene V. Ella, Municipal Health Officer of Magallanes, Sorsogon, performed an autopsy on the body of the victim and submitted a postmortem report on her findings, thus:

1. Stab wound left mid lateral 2 cm. from the sternum at the level of the nipple 2 x 2.5 cms.
2. Stab wound left thorax 2 cms. below the nipple 2 x 5 cms.
3. Stab wound right mid lateral 2 cms. from the sternum 2 x 1 cms.
4. Stab wound at the left hypochondrium 3 x 3 cms.
5. Lacerated wound at the right arm mid postero-lateral 5 x 6 cms.

Cause of death-irreversible shock secondary to massive internal bleeding due to fatal stab wound in the chest.^[17]

Dr. Ella said that when she autopsied the cadaver of the victim, the same was already in the state of *rigor mortis*.^[18] Dr. Ella considered the stab wound on the thorax as the most fatal.^[19] She opined that the said wound could have been inflicted on the victim when the latter had already fallen down.^[20] She added that the other injuries sustained by the victim could have been inflicted while he was in the act of evading the attack or defending himself.^[21]

On August 19, 1996, Catalino and Edina executed sworn statements at the Magallanes Police Station. Both pointed to Percival as the culprit in the killing of

Virgilio.^[22]

Zenaida Mortega, wife of the victim, testified that she suffered damages as a result of her husband's death. Mercy Mortega, her sister-in-law, spent P7,200 for the funeral services. She paid P250 to Mt. Carmel-Magallanes for a five-year rental of the niche. She also spent a total amount of P58,015 for the ten-day wake. Save for the funeral services and the niche rentals, no receipt for all the other expenses was presented. The victim's widow further testified that her grief over the death of her husband could not be quantified in terms of money. She left it to the court to fix the award for moral damages. She further alleged that her husband was earning an average of P5,000 a month, and that he was forty-two years old at the time of his death.^[23]

The Defense of the Accused^[24]

Percival admitted stabbing Virgilio but claimed that he only acted in self- defense. He declared that on August 16, 1996, he arrived early at his nephew's wake at around 4:00 p.m., where he helped in the food preparation for the guests. When he finished cooking at about 8:00 p.m., his brother- in-law, Catalino Mortega, suggested that he join the merrymaking outside the house. At around 10:30 p.m., a drunk Virgilio Mortega arrived. He was invited to join the condolers. However, Virgilio resented the invitation and uttered invectives against a certain Adelardo, who was drinking with the group. Percival intervened to pacify Virgilio and admonished the latter to watch his language, but Virgilio vented his ire on Percival, screaming, "Son of a whore!" At that point, to prevent the tension from escalating, Percival backed down and went inside Catalino's house to inform Catalino that he was leaving. As Percival stepped out of the house, Virgilio suddenly, without provocation, punched him on the left eye, blurring his vision. Instead of retaliating, Percival retreated to the house. But Virgilio followed him and boxed him. Percival managed to evade the blows. His back to the wall and fearing for his life, he picked up an open fan knife idly lying on top of the kitchen table and stabbed Virgilio once with it. Despite his wound, Virgilio still wrestled with him until they got separated and went their opposite ways. He rushed to the office of the *barangay* captain to whom he surrendered.^[25] On August 19, 1986, Dr. Irene Ella treated his contusion on the left eye, for which the latter issued a medical certificate.^[26]

The Verdict of the Trial Court

On December 14, 1999, the trial court rendered judgment, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, we find the accused PERCIVAL GONZA Y BORRAL guilty beyond reasonable doubt of MURDER defined and penalized in Art. 248 of the Revised Penal Code, as amended by R.A. 7659, and hereby sentences him to a single indivisible penalty of RECLUSION PERPETUA (in accordance with par. 3, Art. 63, R.P.C. there being a mitigating circumstance of VOLUNTARY SURRENDER with no aggravating circumstance with all the accessory penalties attendant thereto, and to indemnify the heirs of the victim Virgilio Mortega, as follows:

- a) P50,000.00 for actual damages;
- b) P50,000.00 for compensatory damages by reason of his death; and
- c) another P50,000.00 by way of moral damages, with no subsidiary imprisonment in case of insolvency, and to pay the costs. The number of days, months, or years of confinement of the herein accused shall be credited in his favor for purposes of the execution of the sentence.

SO ORDERED.^[27]

In his brief, Percival, now the appellant, asserts that:

I

THE COURT A *QUO* COMMITTED REVERSIBLE ERROR WHEN IT RELIED SOLELY ON THE ALLEGED EYEWITNESSES' ACCOUNT OF THE INCIDENT AND DISREGARDED COMPLETELY THE TESTIMONY OF THE ACCUSED-APPELLANT THAT HE MERELY ACTED IN SELF-DEFENSE.

II

GRANTING ARGUENDO THAT THERE WAS NO COMPLETE SELF-DEFENSE, THE COURT A *QUO* STILL ERRED IN FINDING THE ACCUSED GUILTY OF MURDER INSTEAD OF THE LESSER OFFENSE OF HOMICIDE. ^[28]

The appellant insists that he acted in self-defense. He asserts that it was the victim who started the fight. He faults the trial court for giving full probative weight and credence to the testimonies of prosecution eyewitnesses Catalino Mortega and Edina Dimaano, despite their implausibility and unreliability. He points out that Catalino and Edina only testified on the actual killing, and that nothing was said regarding events prior thereto, which would show that it was the victim who was in fact the unlawful aggressor.

The contention of the appellant is barren of merit.

Where an accused invokes self-defense, the burden of evidence is shifted to him to prove that he killed the victim to save his life. For this reason, he must rely on his own evidence and not on the weakness of the evidence for the prosecution, for such can no longer be disbelieved after the accused admits the killing.^[29] He must prove with clear and convincing evidence the presence of all the requisites of self-defense, namely, (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.^[30] Of these requisites, the most decisive is that the victim was guilty of unlawful aggression. This is because the theory of self-defense is based on the necessity on the part of the person being attacked to prevent or repel the aggression. Hence, absent evidence of a prior unlawful and unprovoked attack by the victim, the claim of self-defense whether complete or incomplete cannot prosper.^[31]

To meet this burden, the appellant offered his testimony as well as a medical

certificate^[32] stating that he suffered contusions on the night of the incident. These pieces of evidence, however, are not enough.

First. The appellant failed to corroborate his claim of self-defense with evidence other than his own testimony, despite the fact that there were other persons in the *locus criminis* when the stabbing incident happened and who, therefore, may have witnessed the same. In *People v. Calabroso*,^[33] we said that self-defense to be successfully invoked must be established with certainty and proved with sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it. It may not be justifiably entertained when it is uncorroborated by separate competent evidence.

Second. The appellant's bare and self-serving assertions cannot prevail over the positive identification of the appellant as the malefactor made by the two principal witnesses of the prosecution, Edina Dimaano and Catalino Mortega, the appellant's brother-in-law.

Edina testified, thus:

PROS. PURA

Q How many times did the accused stab Virgilio Mortega?

A Six (6) times.

Q Did you see Virgilio Mortega hit?

A Yes, Sir.

Q Would you please describe to us what kind of weapon was used by the accused in stabbing Virgilio Mortega?

A Yes, it was a knife with green handle.^[34]

...

Q And what were the victim going when he was stabbed by the accused, if you know?

A The victim was trying to go out because Percival Gonza was going home, and the victim wanted to accompany him home. And as he went out, Percival Gonza stabbed him. He was following Percival, when Percival Gonza faced him and stabbed him.^[35]

Her testimony was corroborated by her brother, Catalino, thus:

Q So, what happened after that?

A Afterwards, I just saw the victim back into my house and I saw the accused following him with a knife.^[36]

...

Q What did Percival Gonza do with that bladed instrument?

A He stabbed the victim.

Q How many times did you see Percival Gonza stabbed the victim Virgilio Mortega?

A I just saw three times.