

EN BANC

[G.R. No. 146687, August 22, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BONNIE R. RABANAL, ACCUSED-APPELLANT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

In the early dawn of August 11, 1996, a drunken and armed Roberto Pascua was fatally shot by the security guard of a building in Dagupan City, Pangasinan. The prosecution asserts that Pascua was treacherously shot while the defense contends that it was an act of self-preservation.

The security guard, Bonnie R. Rabanal, was charged with Murder committed as follows:

That on or about the 11th day of August 1996, in the City of Dagupan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused BONNIE R. RABANAL, being then armed with a gun, with treachery and with intent to kill one ROBERTO PASCUA, did then and there willfully, unlawfully and criminally attack, assault and use personal violence upon the latter by shooting him, hitting him several times on vital parts of his body with the said gun, thereby causing his death shortly thereafter due to "Cardio Respiratory Arrest, Massive Intra-thoracic and Intra-Abdominal Hemorrhage, Gunshot Wound[s]" as per Autopsy Report and Certificate of Death, both issued by Dr. Thomas G. Cornel, to the damage and prejudice of the legal heirs of said deceased, ROBERTO PASCUA, in the amount of not less than FIFTY THOUSAND PESOS (P50,000.00), Philippine currency, and other consequential damages.

Contrary to Article 248 of the Revised Penal Code, as amended by R.A. 7659.^[1]

The case was docketed as Criminal Case No. 96-01443-D of the Regional Trial Court of Dagupan City, Branch 44. Accused-appellant entered a negative plea when arraigned.^[2] The case thereafter proceeded to trial.

The prosecution's version of the incident:

At 2:00 a.m. of August 11, 1996, Freddie Soriano, a security guard of the CSI building in Dagupan City, saw accused-appellant Bonnie Rabanal, a security guard of the McDonald's restaurant located in the same building, repeatedly shoot at close range the victim Rudy Pascua, the security coordinator of the building. After the victim fell down, accused-appellant fired another shot and then took the victim's gun and fled.^[3]

The victim was rushed to the Pangasinan Provincial Hospital, Dagupan City, where he was declared dead on arrival. The victim suffered four gunshot wounds on the chest, all of which were fatal.^[4]

Accused-appellant, on the other hand, asserts that the fatal shooting of Rudy Pascua was an act of self-defense. He alleges that on August 11, 1996, at 2:00 a.m., Pascua, who was armed and reeking of alcohol, approached him at his usual post in front of the McDonald's restaurant and suddenly kicked the podium, causing it to fall on him. When accused-appellant asked what was the matter, Pascua uttered, "You're hard-headed security guards, I told you to give me P100.00 per head monthly but you refused to give, are you going to give me or not?" He then drew his firearm and said, "If that's the thing you want to happen, I better kill you."^[5]

Accused-appellant pleaded for his life while Pascua demanded that he surrender his firearm. While Pascua was reaching for accused-appellant's holster, the latter pushed him and grabbed his gun. Pascua lost his balance and staggered backwards. At that instant, accused-appellant drew his pistol and pulled the trigger four times. Pascua fell to the ground. Accused-appellant then took the gun from Pascua's hand and brought it to the security agency as proof that somebody attempted to kill him.^[6]

That same day, accused-appellant voluntarily surrendered himself and Pascua's firearm to Supt. Enrique Galang at Camp Crame. He did not surrender at Dagupan because of Pascua's influence as bodyguard of Belen Fernandez. He was brought to the Lingayen Police Station the following day.^[7]

On October 24, 2000, the trial court rendered judgment convicting accused-appellant and imposing on him the supreme penalty of death, thus:

WHEREFORE, the Court finds accused Bonnie R. Rabanal guilty beyond reasonable doubt of the crime of Murder attended by the aggravating circumstance of cruelty and not offset by any mitigating circumstances, and pursuant to law, accused Bonnie R. Rabanal is sentenced to suffer the Death Penalty and to pay an indemnity of P50,000.00 to the heirs of the deceased.

The accused is ordered to pay P100,000.00 representing expenses during the wake and P60,000.00 for the coffin and tomb; P5,440,800.00 as indemnity for loss of earnings; and P50,000.00 as moral damages.

The Service Revolver (caliber .38 with Serial No. 54913 [Exhibit 9]) and the firearm with Serial Number FG66801, 9 mm pistol, Colt MK IV, Exhibit "10", all in the possession of the City Prosecutor, are ordered confiscated and forfeited in favor of the Government. The evidence custodian in the City Prosecutor's Office, Dagupan City, is ordered and directed to turn over the firearms immediately to the Firearms and Explosives Division, Camp Crame, Quezon City.

With costs against the accused.

SO ORDERED.^[8]

Before us on automatic review, accused-appellant argues that:

A. THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT ALL ELEMENTS OF SELF-DEFENSE WERE NOT OBTAINING BASED ON CONJECTURAL, PREPOSTEROUS, AND ILLOGICAL REASONS.

B. THE TRIAL COURT GRAVELY ERRED IN FINDING TREACHERY. THERE WAS NO TREACHERY IN A FACE TO FACE ENCOUNTER WITH DECEASED WHOSE FIREARM WAS WITHIN EASY REACH. FURTHERMORE ACCUSED-APPELLANT NEVER EMPLOYED MEANS TO ENSURE SUCCESS WITHOUT RISK TO HIMSELF.

C. THE TRIAL COURT GRAVELY ERRED FINDING CRUELTY BASED ON THE NUMBER OF ALLEGED MORTAL WOUNDS SUSTAINED BY THE DECEASED. IT IS SUBMITTED THAT CRUELTY REFERS TO THE MANNER OF EXECUTION AND NOT THE NUMBER OF MORTAL WOUNDS INFLICTED IN SELF-DEFENSE.

D. THE TRIAL COURT GRAVELY ERRED IN FINDING THAT SINCE ACCUSED-APPELLANT SURRENDERED AT CAMP CRAME AND NOT AT DAGUPAN VOLUNTARY SURRENDER MUST NOT BE APPRECIATED. NO OTHER SUBMISSION COULD BEST ADDRESS SUCH RULING THAN THAT THE PROFFERED REASON IS UTTERLY WHIMSICAL, TWISTED, AND SHAMEFUL IN A SOCIETY OF THINKING MEN.

E. THE TRIAL COURT GRAVELY ERRED IN COMMITTING HIGHWAY ROBBERY BY AWARDING AN UNCONSCIONABLE AMOUNT OF DAMAGES.^[9]

For self-defense to prosper, accused-appellant must prove by clear and convincing evidence the following elements: (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.^[10] Although all the three elements must concur, self-defense must rest firstly on proof of unlawful aggression on the part of the victim. If no unlawful aggression has been proved, no self-defense may be successfully pleaded, whether complete or incomplete.^[11] In other words in self-defense, unlawful aggression is a primordial element. It presupposes an actual, sudden and unexpected attack or imminent danger on the life and limb of a person – not a mere threatening or intimidating attitude – at the time the defensive action was taken against the aggressor.^[12]

In the case at bar, even if we sustain the version of accused-appellant that the initial act of aggression came from the deceased, we cannot uphold his plea of self-defense. While indeed, the drunken victim initially brandished his handgun and aimed it at accused-appellant, the evidence shows that he laid it down on the nearby concrete porch shortly before he was shot several times by accused-appellant.^[13]

When the deceased laid down his gun, unlawful aggression had already ceased and it was no longer necessary for accused-appellant to have fired successively the way he did at the victim.^[14] Furthermore, we note that accused-appellant had shoved the intoxicated victim who staggered backwards. Hence, it was accused-appellant who became the aggressor when he, despite such prevailing conditions, not to mention the inebriated physical state of the deceased, proceeded to fire several shots at the victim. His act can no longer be interpreted as an act of self-preservation but a perverse desire to kill.^[15]

Accused-appellant, however, insists that the unlawful aggression of the victim was a “continuing one whether or not he momentarily tripped, lost his balance or did

similar acts of temporary character.”^[16] Thus, he argues that even if the deceased lowered his guard at some point, he was still the aggressor. He also cites the fact that the victim was “predisposed to using violence and intimidation while accused-appellant was simply a security guard doing his job;” and that the victim was armed with the more powerful and sophisticated .9mm Colt MK IV series 80, while accused-appellant merely had an inferior .38 caliber pistol.^[17]

These arguments fail to persuade.

There is unlawful aggression when the peril to one’s life, limb or right is either actual or imminent. Actual peril to one’s life means that the danger must be present, that is, actually in existence, or imminent in that the danger is on the point of happening.^[18] This cannot be said in this case because the victim was unarmed when he was shot by accused-appellant.^[19] Indeed, the danger had already ceased when the victim laid his gun down on the pavement, thus enabling accused-appellant to push him away.

Furthermore, even assuming that the victim was a gun club member armed with a more powerful handgun than that of accused-appellant, it must be pointed out that the deceased was at the time of the incident a middle-aged and drunken 46 year-old,^[20] with impaired and slowed physical reflexes on account of his intoxication. Accused-appellant, on the other hand, was a youthful and sober 27 year-old security guard, in full possession of his physical faculties.^[21] Accused-appellant stands 5’5”^[22] while the victim’s height was only 5’2”.^[23] Suffice it to state that under such conditions, it would have been easy for the bigger, sober accused-appellant to subdue the intoxicated and already unarmed victim.

It must be remembered that the means employed by the person making a defense must be rationally necessary to prevent or repel an unlawful aggression.^[24] What the law requires is a rational equivalence, in the consideration of which will enter as principal factors the emergency, the imminent danger to which the person attacked is exposed, and the instinct more than reason, that moves or impels the defense; and the proportionateness thereof does not depend upon the harm done, but upon the imminent danger of such injury.^[25]

In other words, whether or not the means employed is reasonable will depend upon the nature and quality of the weapon used by the aggressor, his *physical condition, character, size* and other circumstances and those of the person defending himself as well as the place and occasion of the assault.^[26]

In the case at bar, assuming *arguendo* that the aggression was continuing, the means employed by accused-appellant in repelling the assault of the unarmed victim was not reasonable. It must be noted that the deceased sustained four (4) gunshot wounds fired at close range, all of them concentrated on the chest area and each of them fatal.^[27] It bears repeating in this regard that the nature and number of wounds inflicted by the accused are constantly and unremittingly considered as important *indicia* which disprove the plea for self-defense because they demonstrate a determined effort to kill the victim and not just defend oneself.^[28]

All told, the Court finds no reason to reverse the ruling of the court *a quo* insofar as accused-appellant’s culpability is concerned.