

## FIRST DIVISION

[ G.R. No. 138782, September 27, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JERRY VILLEGAS, ACCUSED-APPELLANT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

In the evening of March 28, 1997, around 8:30 p.m., Paz Mendoza accompanied her husband, Jaime Mendoza, to buy cigarettes at a nearby store in Barangay Masaya, Bay, Laguna. She waited on the street while Jaime bought the cigarettes. Thereafter, as Jaime was walking towards her, accused-appellant Jerry Villegas suddenly emerged from the dark and stabbed him with a foot-long knife. Jaime was hit on the left side of the body and fell on the ground.

Dominique, Jaime's younger brother, was at the store playing billiards. He heard Paz's shouts for help and rushed to where Jaime fell. As he was about to carry Jaime, accused-appellant attacked him with a knife. Dominique ran away. He picked up a stone and threw it at accused-appellant, which caused the latter to flee. Jaime was then brought to the Laguna Provincial Hospital where he expired.

Dr. Richard Macapagal certified that the cause of Jaime's death was cardio-pulmonary arrest secondary to hypovolemic shock secondary to stab wound seven cm. superiorpole at the left kidney.

Meanwhile, accused-appellant went to Barangay Captain Delfin Punzalan, who accompanied him to the police authorities to surrender. He was subsequently charged with Murder in an information which reads:

That on or about 8:30 o'clock in the evening of March 28, 1997 at Barangay Masaya, Municipality of Bay, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation and while conveniently armed with a deadly weapon, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon one Jaime Mendoza by stabbing the latter with the use of the said weapon hitting the said Jaime Mendoza on the vital part of his body inflicting upon the latter mortal wound which directly caused his instantaneous death, to the damage and prejudice of the surviving heirs of the said Jaime Mendoza.

The aggravating circumstances of treachery, evident premeditation and night time which circumstance was sought by the accused to facilitate the commission of the crime, were in attendance.

CONTRARY TO LAW.<sup>[1]</sup>

The case was docketed as Criminal Case No. 5305-97-C and filed before the Regional Trial Court of Calamba, Laguna, Branch 34.

Accused-appellant pleaded not guilty when arraigned.

During the trial, accused-appellant interposed self-defense. He alleged that at 6:30 p.m. of March 28, 1997, he was at the store of Narding Quizon in Barangay Masaya, Bay, Laguna. Jaime and three others were there playing pusoy. Accused-appellant worked as part-time butcher at Jaime's meat store. Jaime threatened to kill him for not paying for the meat he allegedly bought. Accused-appellant denied owing Jaime any amount. When the game was over and accused-appellant was about to go home, Jaime again threatened to kill him. Accused-appellant ignored him and proceeded home. Later, Jaime stopped in front of accused-appellant's house and shouted invectives. Accused-appellant went out of his house and saw Jaime shooting at the house while his two companions threw stones. When Jaime saw accused-appellant, he shot him in the arm. As Jaime was about to fire a second shot, accused-appellant stabbed him. Jaime ran towards one of his companions, Guilbert Ortiz, who took his gun and aimed it at accused-appellant. However, the gun did not fire.

Laila Villaruel, the records custodian at the *Pagamutang Pangmasa*, identified the Medical Certificate issued by Dr. Lilibeth Realuyo attesting to the treatment of accused-appellant's gunshot wound.

Delfin Punzalan, the Barangay Captain of Tranca, Bay, Laguna, accompanied accused-appellant in surrendering to police authorities. He noticed that accused-appellant was wearing a bandage.

SPO2 Antonio del Castillo testified that in the course of investigating the case, he took the statement of Olga Lapidario that Jaime fired shots at accused-appellant's house.

Teresita V. Faustino, a midwife at the Pagamutang Pangmasa, testified that accused-appellant's brother is her co-employee in the hospital; and that she assisted Dr. Realuyo in treating accused-appellant.

Finally, Lorena Villegas, accused-appellant's wife, testified that around 8:00 in the evening of March 28, 1997, she and her family were inside their house when she heard Jaime outside shouting, "*Putang ina mo Jerry Villegas, lumabas ka diyang . . . ang laki-laki mong duwag.*" Then, Jaime fired at their house. Accused-appellant went outside. Lorena heard another shot and accused-appellant's voice crying out for help. When she peeped from the kitchen window, she saw accused-appellant in front of their house and Jaime holding a gun. Accused-appellant told her to bring their children to their grandmother's house. He then asked for help from the neighbors but no one helped him because they were afraid of Jaime. Lorena saw Dominique Mendoza and Guilbert Ortiz throwing stones at their house and the house of her mother-in-law. Ortiz approached accused-appellant and poked a gun at him. Then she heard her sister shout, "Patay si Kuya Jerry." Ortiz pulled the trigger of the gun but it did not fire. Lorena claimed that Paz Mendoza was not present at the scene of the crime.

After trial, a judgment was rendered, the dispositive portion of which reads:

ACCORDINGLY, this Court finds accused Jerry Villegas GUILTY beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code, as amended, and after appreciating the mitigating circumstance of voluntary surrender in his favor, thereby sentences him to suffer the penalty of Reclusion Perpetua with all its attendant accessory penalties.

Accused is further ordered to indemnify the heirs of the deceased Jaime Mendoza the sum of Twenty-Seven Thousand Three Hundred Fifty (PhP27,350.00) Pesos as actual damages and Fifty Thousand (PhP50,000.00) Pesos as compensatory damages.

With costs against the accused.

SO ORDERED.<sup>[2]</sup>

Hence, this appeal anchored on the following assignment of errors:

I. THE COURT A QUO ERRED IN NOT CONSIDERING THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE IN FAVOR OF THE ACCUSED-APPELLANT ANENT THE SUBJECT INCIDENT.

II. THE COURT A QUO ERRED IN GIVING FULL FAITH AND CREDENCE TO THE UNCORROBORATED TESTIMONY OF THE PROSECUTION'S PRINCIPAL WITNESS AND IN COMPLETELY DISREGARDING THE CLEAR AND CONVINCING EVIDENCE ADDUCED BY THE ACCUSED-APPELLANT AND HIS WITNESSES ANENT THE QUESTIONED INCIDENT.

III. GRANTING ARGUENDO THAT THE ACCUSED-APPELLANT IS GUILTY, NONETHELESS, THE COURT A QUO ERRED IN CONVICTING HIM OF MURDER AS THE CRIME COMMITTED WAS ONLY HOMICIDE.<sup>[3]</sup>

As a rule, the prosecution has the *onus probandi* of establishing the guilt of the accused.<sup>[4]</sup> However, when the accused pleads self-defense and owns up to the killing, the burden of evidence shifts to him. He must then show by clear and convincing evidence that he indeed acted in self-defense. For that purpose, he must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence.<sup>[5]</sup>

The justifying circumstance of self-defense "is an affirmative allegation that must be proven with certainty by sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it."<sup>[6]</sup> Where the accused-appellant has admitted that he is the author of the death of the deceased, it is incumbent upon him, in order to avoid criminal liability, to prove the justifying circumstance claimed by him to the satisfaction of the court. To do so, he must rely on the strength of his own evidence, and not on the weakness of the prosecution for even if it were weak, it could not be disbelieved after the accused admitted the killing.<sup>[7]</sup>

Notably, when an accused invokes self-defense, it becomes his inescapable burden to prove clearly and convincingly the elements of self-defense, namely: (1) unlawful aggression; (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.<sup>[8]</sup>

At the core of this defense is proof of unlawful aggression on the part of Jaime. It bears stressing that for unlawful aggression to be present, there must be a real danger to life or personal safety.<sup>[9]</sup> There must be an actual, sudden and unexpected attack or imminent danger thereof, and not merely a threatening or intimidating attitude.<sup>[10]</sup>

Accused-appellant asserts that Jaime fired shots at his house and when he went out, Jaime aimed his gun at him hitting him in the arm. He further asserts that this was corroborated by testimonial and documentary evidence which the prosecution failed to refute.

On this score, we agree with the trial court's findings, to wit:

The central point of inquiry then is the ascertainment of whether the wound endured by the accused was caused by a bullet fired from the gun of the deceased Jaime Mendoza and which prompted the accused to retaliate by fatally stabbing the deceased in legitimate self-defense.

One intriguing factor, however, is that while there can be no doubt that a wound was suffered by the accused, no credible evidence was ever presented to show the nature and the gravity of the injury. True, the medical certificate and sketch of the human body where the wound was depicted were marked, offered and admitted as evidence for the defense, but we remain skeptical of their genuineness and authenticity as the medical doctor who allegedly treated the accused and issued the certificate was not presented as a witness. The testimony of Teresita Faustino who allegedly assisted Dr. Realuyo in attending to the accused, we take with a grain of salt, having testified only after the record custodian was totally discredited by the prosecution. Further, we find it extremely convenient for the accused and unworthy of belief the witness' (Faustino) assertion that of more or less ten (10) emergency patients at that time she only assisted in the treatment of the accused.

The Court's inference that the medical certificate and diagram of the human body are of dubious origin is not without ample support. The signature of Dr. Realuyo, the attending physician, in her identification card does not bear any similarity to her alleged signature in the documents offered as evidence. Had these documents been issued on the very night the accused sought medical treatment, he could have very well offered this to the police during the investigation. But as the testimony of SPO2 Antonio del Castillo would readily show, despite having been asked by the police to give his statement, neither the accused nor his numerous witnesses did so, with the exception of one Olga Lapidario who gave her statement only on April 7, 1997 but did not actually appear in Court to substantiate the same. Further, the records show that a brother of the accused was at that time an employee of the hospital, thus, the temptation to "create" supporting documents was always present.

As we perforce dismiss the proposition that the wound suffered by the accused was the result of a gunshot, we must also logically ignore the event that Jaime Mendoza fired his gun at the house of the accused. As testified to by SPO2 del Castillo, he found no holes nor empty shell at the