

SECOND DIVISION

[G.R. No. 128116, January 24, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CIC
GILBERT PERALTA Y RINGOR, ACCUSED-APPELLANT.**

D E C I S I O N

DE LEON, JR., J.:

Before us on appeal is the Decision^[1] of the Regional Trial Court of Quezon City, Branch 106, in Criminal Case No. Q-91-23687 convicting the appellant, Gilbert Peralta y Ringor, of the crime of murder.

Gilbert Peralta was charged with the crime of murder as defined and penalized under Article 248 of the Revised Penal Code, in an Information that reads:

That on or about the 3rd day of July, 1991, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, qualified by evident premeditation and treachery, taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously, attack, assault and employ personal violence upon the person of one LOUISE RIMANDO Y MEDINA, by then and there, shooting him with a gun, hitting him twice in the body, thereby inflicting upon him serious and mortal wounds which was the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of the said offended part (*sic*) in such amount as may be awarded under the provisions of the Civil Code.

Upon being arraigned, appellant Gilbert R. Peralta pleaded "Not Guilty", and the trial ensued.

The evidence of the prosecution shows that prosecution witnesses Crizaldo Esguerra, Delfin Soriano, and Danilo Gaa were schoolmates of the victim, Louise Rimando, at The Technological Institute of the Philippines and fraternity brothers in Tau Gamma Fraternity. After watching a basketball game in Pasig City in the evening of July 2, 1991, Louise Rimando together with Crizaldo Esguerra, Delfin Soriano and Danilo Gaa, proceeded to Quezon City "to pick up" prostitutes. When they reached the Aberdeen Court Hotel along Quezon Avenue in Quezon City, Rimando alighted from their owner type jeep that was being driven by Esguerra and talked to a gay pimp named Roberto Reyes. Rimando introduced himself as an agent of the National Bureau of Investigation apparently to avail of a discount for the services of the prostitutes. Reyes agreed to introduce certain young girls to Rimando and proposed to pick them up in front of the Aberdeen Court Hotel. When the jeep reached the hotel, Reyes together with two (2) of the girls and another gay named Sandro Lim suddenly boarded the jeep. Reyes told Rimando, "Mamang NBI, tulungan ninyo kami. Andiyang iyong CAPCOM na nanghihingi sa amin ng pera." Upon Rimando's

instructions, the jeep sped away with eight (8) persons on board.^[2]

While driving along Quezon Avenue in Quezon City, one of the pimps noticed that they were being followed by appellant in a taxi cab. Rimando instructed Esguerra to park the jeep in front of Dunkin Donuts at the corner of Quezon and West Avenues in Quezon City. Rimando ordered the two gays to alight from the jeep. Meanwhile, the taxi parked behind the jeep. One of the ladies also got off the jeep for fear of being arrested. The appellant who was holding a .38 caliber firearm alighted and approached Rimando who was then seated beside the driver's seat. Appellant inquired if they were policemen, but Rimando replied in the negative. Rimando stated that he was an agent of the National Bureau of Investigation and showed the appellant his N.B.I. Identification Card. The appellant said, "N.B.I. ka pala" and suddenly grabbed Rimando's identification card before he shot Rimando twice in the body. Appellant went back to his taxi and left. The three (3) eyewitnesses had a clear view of appellant's face inasmuch as there was a lamppost that illuminated the area.^[3]

On cross and re-direct examination, prosecution witness Crizaldo Esguerra testified that Rimando and the appellant had an argument that lasted for two (2) to three (3) minutes before the appellant shot Rimando.^[4]

Rimando was brought to the United Doctors Medical Center but was later transferred to Santo Tomas University Hospital in Manila. On July 7, 1991, he was pronounced dead.^[5] Dr. Sergio Alteza, Jr., the medico legal officer of the Santo Tomas University Hospital, conducted the autopsy on the body of the deceased, Rimando. His findings showed that:

GENERAL PHYSICAL EXAMINATION:

Conscious (sic), Stretcher - Borne

INJURIES :

1. GSW of entry, 2 x 2 cm., abdomen Rt. Anterior lumbar area.
2. GSW of entry, 1 x 1.5 cm., Rt. Posterior lumbar area.
3. GSW of exit, left antero-lateral iliac area.
4. Multiple perforating GSW (6) involving the jejunum and 2 perforations of sigmoid colon.
5. Hemoperitonium

CONCLUSION:

Patient pronounced dead July 7, 1991.^[6]

According to Dr. Alteza, the first gunshot wound was fatal inasmuch as it hit the intestines and other vital organs of the victim. On the basis of the location of the gunshot wounds, he declared that the assailant must have been at the right lateral side of the victim at the time of the shooting incident. He did not find any injuries on

the hands of the victim.

For the defense, appellant testified that he was a member of the Central District Field Force, Intelligence Investigation Unit of the Central Police District. On July 2, 1991, pursuant to a mission order^[7], the appellant was dispatched to Quezon Avenue near Aberdeen Court Hotel in Quezon City concerning rampant prostitution in the area. He was in a civilian attire and was carrying an authorized .38 caliber gun.^[8]

While conducting police surveillance on board a taxi, at about 1:00 o' clock in the morning of July 3, 1991, he spotted three (3) young girls sitting in front of the Aberdeen Court Hotel along Quezon Avenue in Quezon City. Suspecting them to be prostitutes, he instructed the taxi driver to stop in front of the hotel. When a pimp named Roberto Reyes approached him and said, "Mama, gusto mong chicks?", he identified himself as a police officer. Reyes then shouted to warn the girls that the appellant was a police officer. Reyes together with two (2) of the girls and another gay boarded an owner-type jeep. Appellant went back to the taxi and followed the jeep to effect an arrest. When the jeep stopped, he alighted from the taxi and approached its passengers. After identifying himself as a police officer, Rimando arrogantly introduced himself by saying "E, ano kung pulis ka, NBI naman ako."^[9] Appellant showed his identification card to Rimando but the latter asked him what he wanted from them. Appellant replied, "Pare, wala naman iyon," and informed Rimando that the girls inside the jeep were subject to arrest. The hot-tempered Rimando insisted that the ladies were the girlfriends of his companions.^[10] Their heated discussion lasted for about two (2) to three (3) minutes.^[11] The girls jumped off the jeep after hearing that the appellant was going to arrest them. Appellant tried to pursue them but Rimando grabbed appellant's right forearm and held appellant's .38 caliber gun. However, the appellant maintained his hold of the gun with both of his hands. As the companions of Rimando were already approaching, appellant accidentally pressed the trigger twice.^[12] After the gun went off, appellant took cover behind a concrete post. After the jeep had left toward the south, appellant proceeded to his headquarters and reported the incident to the Officer-in-Charge of the Intelligence Investigation Unit, Dante Yan.^[13]

The next day, Police Officer Dante Yan formed a team to conduct follow-up operations regarding the incident; however, the team was not able to find out the identity of the victim. Police Officer Yan prepared a spot report to inform their commanding officer, Police Chief Senior Inspector Absalon Salboro, of the accidental firing of the appellant's firearm.^[14] It was only on August 23, 1991, or about one and a half months after the shooting incident, that the appellant was identified as the assailant of the deceased victim, Rimando.^[15]

In his eleven (11) years in the police service, this was the first time that appellant was charged with a criminal offense.^[16]

To corroborate the appellant's testimony, Roberto Reyes testified that in the early morning of July 3, 1991, Rimando approached him looking for "pick-up" girls. To avail of a discount, he introduced himself as an agent of the National Bureau of Investigation. They agreed that the girls would be picked up in front of the Aberdeen Court Hotel located along Quezon Avenue in Quezon City. Before the jeep arrived at

their rendezvous, the appellant's taxi arrived. Reyes approached the taxi and offered the services of a pick-up girl to the appellant. But the appellant threatened to arrest Reyes. This prompted Reyes to warn his companions of the presence of a police officer. Reyes, together with two (2) girls and a certain Sandro Lim boarded the victim's jeep which immediately sped away. The taxi followed the jeep up to an outlet of the Dunkin Donuts located along West Avenue in Quezon City where they parked. Reyes claimed that the appellant drove the taxi by himself. Reyes and Lim hid near a parked car after alighting from the jeep. Appellant approached Rimando who stood up and confronted the appellant face to face. Rimando and the appellant had a heated argument. Rimando even pushed the appellant. As Rimando tried to get something from his back pocket, the appellant pulled out his hand gun and poked it at the former. When Rimando was not able to get his weapon from his waist, he grabbed the appellant's firearm. While the appellant and Rimando struggled for the possession of the gun, Reyes heard two (2) gunshots. Thereafter, Reyes and Lim left the premises by boarding a taxi.^[17]

After weighing the evidence, the trial court on November 21, 1996 rendered a Decision finding the appellant guilty beyond reasonable doubt of the crime of murder. The dispositive portion of the decision reads:

WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered finding accused GILBERT PERALTA Y RINGOR GUILTY beyond reasonable doubt of the crime of MURDER, defined and penalized under the provisions of Article 248 of the Revised Penal Code and conformably thereto, and as its commission was prior to the effectivity of the Death Sentence Law, he is hereby sentenced to suffer the penalty of imprisonment of *RECLUSION PERPETUA*; and to indemnify the heirs of the deceased victim the sum of P50,000.00, plus P57,000.00, actual damages and P35,000.00, as moral damages and P35,000.00 as exemplary damages and to pay the costs.

It appearing that the accused is a detention prisoner, he may be entitled to be credited of his preventive imprisonment in the service of his sentence provided therein, pursuant to existing laws.

SO ORDERED.^[18]

In his appeal, the appellant raised the following assignment of errors:

I

The Court *a quo* erred in finding that accused-appellant CIC Gilbert Peralta who was engaged in the performance of his official duty, did not act in self-defense in shooting and killing victim Louise Rimando.

II

The Court *a quo* erred in finding that treachery attended the shooting of victim.

III

The Court *a quo* erred in disregarding the testimony of Roberto Reyes who was with the group of victim at the time of the shooting.

IV

The Court *a quo* erred in ordering accused-appellant to pay the heirs of victim the amount of P50,000.00 death indemnity; P57,000.00 actual damages; P35,000.00 moral damages; and P35,000.00 exemplary damages.^[19]

That appellant killed the victim is not disputed. However, the appellant invokes the justifying circumstance of self-defense. Consequently, the burden of proof is shifted from the prosecution to the defense and it is the duty of the latter to establish self-defense by clear and convincing evidence. The defense must rely on the strength of its own evidence and not on the weakness of the prosecution, for even if that were weak it cannot be disbelieved after the appellant himself has admitted killing the victim.^[20]

The three (3) elements of self-defense are provided under Article 11 of the Revised Penal Code which states that:

Art. 11. Justifying Circumstances. - The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

x x x

There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent. There must be actual physical force or actual use of a weapon.^[21] It is a statutory and doctrinal requirement that for the justifying circumstance of self-defense, the presence of unlawful aggression is a condition *sine qua non*. There can be no self-defense, complete or incomplete, unless the victim has committed an unlawful aggression against the person defending himself.^[22]

In the case at bar, the appellant's claim that his forearm was held by the victim and even attempted to grab his gun cannot be believed. There were no signs of injuries on the hands of the victim. It was sufficiently proven by the prosecution that appellant shot the victim while the latter was still seated beside the driver's seat inside the jeep. The medical findings of Dr. Sergio Alteza, Jr., medico legal officer of the UST Hospital, showed that the point of entry of one of the bullets was at the