

THIRD DIVISION

[G.R. No. 141749, April 17, 2001]

**FLORENCIO DEL ROSARIO, PETITIONER, VS., PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

GONZAGA-REYES, J.:

This is a petition for review on *certiorari* of the decision^[1] of the Court of Appeals, dated September 29, 1999, which affirmed *in toto* the judgment^[2] of the Regional Trial Court, Branch 24, Cabugao, Ilocos Sur, finding petitioner Florencio Del Rosario guilty beyond reasonable doubt of homicide and sentencing him to an indeterminate penalty of six (6) years and one (1) day of *prision mayor*, as minimum, up to twelve (12) years and one (1) day of *reclusion temporal*, as maximum, and ordering him to pay the heirs of Remy Sinco, the amount of P50,000.00 as death indemnity.

Petitioner Florencio together with Edilberto, Alejandro, Emilio, Antonio (all surnamed Del Rosario) and Tomas Abolero were charged with murder in an information,^[3] filed on November 8, 1993 by the provincial prosecutor, which alleged -

That on or about the 7th day of August, 1993, in the municipality of Cabugao, province of Ilocos Sur, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, with treachery and evident premeditation and with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack and shoot with the use of illegally possessed firearms one Remy Sinco, thereby inflicting upon the latter mortal wounds on his body, which wounds necessarily produced the death of said Remy Sinco.

CONTRARY TO LAW.

Upon arraignment on May 18, 1994, all the above-named accused, assisted by their counsel, entered a plea of "not guilty" to the crime charged.^[4] Thereafter, trial ensued with the prosecution presenting Lorna Sinco, the victim's spouse; Oliver, his son; Edgar, his nephew; Dr. Rudy Singson, Rural Health Physician; and Rodolfo Somera, Chief Investigator of the Cabugao Police Station, as its witnesses. Their testimonies as summarized by the trial court and adopted by the appellate court are as follows:

"On the night of August 7, 1993, at about 9:00 o'clock, the late Remy Sinco, together with his common-law wife, Lorna Sinco, their child Oliver Sinco and their nephew Edgar Sinco, went to the seashore at Brgy. Pugos, Cabugao, Ilocos Sur, to buy fish; that they passed by the house and yard of accused Emilio del Rosario where all the six (6) accused were drinking liquor; that Remy Sinco made the usual greeting addressed to accused Florencio del Rosario, saying: "We will pass by, cousin", to which Florencio del Rosario replied: "Yes, cousin"; that Remy's group proceeded on their way to buy fish at the seashore; that after buying fish, they took the same route on their way home; that upon reaching the place where the accused were drinking liquor, all of a sudden, accused Emilio del Rosario, Alejandro del Rosario, Antonio del Rosario and Tomas Albolero held Remy's arms and shoulders, after which accused Florencio del Rosario and Edilberto del Rosario shot Remy Sinco at point-blank range; that Remy slumped, while his common-law wife, son and nephew ran towards the national highway to call for help; that while running away, they still heard three (3) successive shots; that eventually, policemen from Cabugao, Ilocos Sur, arrived to retrieve the body of Remy Sinco at a place about thirty (30) meters south of the place where the accused were drinking liquor and where Remy Sinco was allegedly accosted and shot to death.^[5]

On the other hand, the defense interposed a different version of the incident. Petitioner Florencio Del Rosario admitted killing the victim but disclaimed liability by invoking self-defense. According to him, he had been shot at first, before he shot the victim. All the other accused, namely, Edilberto, Emilio, Alejandro, Antonio (all surnamed Del Rosario) and Tomas Albolero denied any participation in the killing of Remy Sinco. The version of the defense was synthesized by the trial court as follows:

Accused Florencio del Rosario claimed that he, alone, killed the deceased in an act of self-defense. He testified that the deceased and his companions, namely: Nelson Sayo, Oliver Sinco and Edgar Sinco, but without the victim's common-law wife, Lorna Sinco, were on their way to the seashore when Remy Sinco stopped at the place where they were drinking liquor and hurled invectives at him; that his companions, notably Alejandro del Rosario, pacified them when they had a heated exchange of words; that thereafter, the deceased and his companions proceeded on their way towards the seashore; that when they returned, Remy Sinco dropped by the same place and let his companions go ahead; that he had conversation with the accused for about thirty (30) minutes, after which the deceased requested Florencio del Rosario to conduct him home; that Florencio del Rosario obliged and while they were on their way towards the south, Florencio observed that Remy's companions were waiting at a distance of about eight (8) meters; that as a precautionary measure, Florencio del Rosario stepped back and moved away from Remy Sinco; that it was at this juncture that Remy Sinco turned around and fired his gun at Florencio del Rosario three (3) times, but only one (1) shot found its mark; that when Florencio felt that he

was hit on his right leg, he dropped to, and rolled on the ground, drew his gun and fired at Remy Sinco who, it turned out, was fatally hit."^[6]

On the basis of the testimonial and documentary evidence on record, the trial court rendered judgment convicting petitioner Florencio Del Rosario of homicide not murder, and acquitting all his other co-accused on the ground that conspiracy amongst them in perpetuating the killing of Remy Sinco was not proven beyond reasonable doubt. As mentioned earlier, the Court of Appeals affirmed the findings of the trial court that the evidence for the defense failed to establish the justifying circumstance of self-defense, particularly, the defense failed to prove unlawful aggression on the part of the victim and the reasonable necessity of the means employed to prevent or repel the unlawful aggression.

Hence, the instant petition, on the ground that the Court of Appeals gravely abused its discretion in:

- a. HOLDING THAT PETITIONER FAILED TO PROVE SELF-DEFENSE;
- b. SUSTAINING THE FINDING OF THE TRIAL COURT WHICH OVERLOOKED, MISUNDERSTOOD AND MISAPPLIED SOME FACT OR CIRCUMSTANCE OF WEIGHT AND SUBSTANCE THAT COULD HAVE AFFECTED THE RESULT OF THE CASE.^[7]

Petitioner argues that he acted justifiably and reasonably in defending himself against an assailant who had already wounded him; he insists that he was first shot in the leg by the deceased; that after being wounded, he cannot be expected to act calmly and just think of maiming the deceased.

After a careful examination of the evidence and study of the records on hand, the Court finds no merit in the petition.

Both the trial and appellate courts found petitioner Florencio Del Rosario's self-defense theory unbelievable. To begin with, petitioner failed to consider that where an accused invokes self-defense to prove that he killed the victim to save his life, the burden of proof is shifted to him.^[8] He must rely on his own evidence and not on the weakness of the prosecution.^[9] Having admitted the killing, it became his inescapable burden to prove clearly and convincingly the elements of unlawful aggression on the part of the victim, reasonable necessity of the means employed to prevent or repel the aggression, and lack of sufficient provocation on the part of the person defending himself.^[10] This, petitioner failed to do.

First of all, on the witness stand, petitioner narrated that there existed between him and the victim, Remy Sinco, ill-feelings way back in 1992, because the former refused to give protection to the latter's plan to set up illegal gambling in Manila. On the day the victim met his untimely death, the two of them had a heated altercation because the victim insulted him. Despite the rancor which existed between them, petitioner testified that Remy asked to be taken home that very same day. On the way home, Remy allegedly shot at his foot and he retaliated, killing him. The said version runs counter to human experience and behavior. It