

EN BANC

[G.R. No. 128359, December 06, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERTO E. DELA CRUZ, ACCUSED-APPELLANT.**

DECISION

VITUG, J.:

For automatic review is the decision, dated 27 November 1996, of the Regional Trial Court, Branch 27, of Cabanatuan City, which has sentenced to death Roberto E. de la Cruz for "Qualified Illegal Possession of Firearm and Ammunition with Homicide."

The information charging the accused with the offense, to which he pled "not guilty" when arraigned, read:

"That on or about the 27th day of May, 1996, in the City of Cabanatuan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one DANIEL MACAPAGAL, by shooting the latter with the use of an unlicensed Caliber .38 snub nose firearm, with Serial No. 120958, thereby inflicting upon him gunshot wounds on different parts of his body, which caused also his death."^[1]

The facts relied upon by the trial court in its judgment were narrated by the Office of the Solicitor General in the People's brief.

"The victim Daniel Macapagal, a married man, had been a live-in partner of prosecution witness Ma. Luz Perla San Antonio for about two to three years before San Antonio took appellant Roberto de la Cruz, widower, as lover and live-in partner. At the time of the incident on May 27, 1996, appellant and San Antonio were living in a house being rented by San Antonio at 094 Valino District, Magsaysay Norte, Cabanatuan City (pp. 2-3, TSN, July 6, 1996).

"At around 6:00 o'clock in the evening on May 27, 1996, San Antonio and appellant were resting in their bedroom when they heard a car stop in front of their house and later knocks on their door. San Antonio opened the front door and she was confronted by Macapagal who made his way inside the house holding a gun in his hand, despite San Antonio's refusal to let him in. He seemed to be looking for something or somebody as Macapagal walked passed San Antonio and inspected the two opened bedrooms of the house. He then went to the close bedroom where the

appellant was and banged at the door with his gun while yelling 'Come out. Come out' (p. 4, Ibid.). Appellant then opened the door but he was greeted by Macapagal's gun which was pointed at him. Appellant immediately closed the door while Macapagal continued banging at it. When appellant again opened the door moments later, he was himself armed with a .38 caliber revolver. The two at that instant immediately grappled for each other's firearm. A few moments later shots were heard. Macapagal fell dead on the floor.

"Appellant told San Antonio to call the police on the phone. After a few minutes police officers arrived at the scene. They saw the dead body of Macapagal slumped on the floor holding a gun. San Antonio met them on the door and appellant was by then sitting. He stood up to pick his .38 caliber revolver which he surrendered to SPO3 Felix Castro, Jr. Appellant told the police that he shot Macapagal in self-defense and went with them to the police station.

Dr. Jun Concepcion, Senior Medical Officer of the Cabanatuan City General Hospital, performed an autopsy on the cadaver of Macapagal and submitted a report thereon (Exhibit H). Macapagal sustained four (4) gunshot wounds. Three of the wounds were non-penetrating or those that did not penetrate a vital organ of the human body. They were found in the upper jaw of the left side of the face, below the left shoulder and the right side of the waist. Another gunshot wound on the left side of the chest penetrated the heart and killed Macapagal instantly.

It was later found by the police that the firearm used by Macapagal was a 9mm caliber pistol. It had one magazine loaded with twelve (12) live ammunition but an examination of the gun showed that its chamber was not loaded.

"Macapagal had a license to carry said firearm. On the other hand, appellant, who denied ownership of the .38 caliber revolver he used, had no license therefore."^[2]

Unmoved by the claim of self-defense invoked by the accused, the trial court pronounced a judgment of guilt and handed a death sentence.

"WHEREFORE, premises considered, the Court finds and so declares the accused ROBERTO DELA CRUZ guilty beyond reasonable doubt of the crime of Qualified Illegal Possession of Firearm and Ammunition with Homicide, which is penalized under Presidential Decree 1866, Sec. 1, and he is hereby sentenced to suffer death; he is, likewise ordered to indemnify the heirs of the deceased victim in the sum of P50,000.00; to pay actual damages in the sum of P65,000.00 representing burial and interment expenses; and the sum of P2,865,600.00 representing loss of income."^[3]

In his plea to this Court, accused-appellant submits that the decision of the court a

quo is bereft of factual and legal justification.

When self-defense is invoked, the burden of evidence shifts to the accused to show that the killing has been legally justified.^[4] Having owned the killing of the victim, the accused should be able to prove to the satisfaction of the court the elements of self-defense in order that the might be able to rightly avail himself of the extenuating circumstance.^[5] He must discharge this burden by clear and convincing evidence. When successful, an otherwise felonious deed would be excused mainly predicated on the lack of criminal intent of the accused. Self-defense requires that there be (1) an unlawful aggression by the person injured or killed by the offender, (2) reasonable necessity of the means employed to prevent or repel that unlawful aggression, and (3) lack of sufficient provocation on the part of the person defending himself. ^[6] All these conditions must concur.^[7]

Here, the Court scarcely finds reversible error on the part of the trial court in rejecting the claim of self-defense.

Unlawful aggression, a primordial element of self-defense, would presuppose an actual, sudden and unexpected attack or imminent danger on the life and limb of a person - not a mere threatening or intimidating attitude^[8]- but most importantly, **at the time the defensive action was taken against the aggressor**. True, the victim barged into the house of accused-appellant and his live-in partner and, banging at the master bedroom door with his firearm, he yelled, "come out." Accused-appellant, however, upon opening the door and seeing the victim pointing a gun at him, was able to prevent at this stage harm to himself by promptly closing the door. He could have stopped there. Instead, accused-appellant, taking his .38 caliber revolver, again opened the bedroom door and, brandishing his own firearm, forthwith confronted the victim. At this encounter, accused-appellant would be quite hardput to still claim self-defense.^[9]

The second element of self-defense would demand that the means employed to quell the unlawful aggression were reasonable and necessary. The number of the wounds sustained by the deceased in this case would negate the existence of this indispensable component of self-defense.^[10] The autopsy report would show that the victim sustained four gunshot wounds -

"1. Gunshot wound on the (L) shoulder as point of entry with trajectory toward the (L) supra-scapular area as point to exit (through-through);

"2. Gunshot wound on the abdomen ® side laterally as point of entry (+) for burned gun powder superficially with trajectory towards on the same side as point of exit, through-through;

"3. Gunshot wound on the anterior chest (L) mid-clavicular line, level 5th ICS as point of entry with trajectory towards the (L) flank as point of exit (through-through) Internally: penetrating the heart (through-through) anterior then posterior then (L) hemidia -prhagm and stomach; and

"4. Lacerated wound linear ½ inch in length (L) cheek area"^[11] -