

FIRST DIVISION

[G.R. Nos. 106229-30, March 15, 1996]

**LEOVIGILDO ROSALES, PETITIONER, VS. COURT OF APPEALS
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

LEOVIGILDO ROSALES was charged before the Regional Trial Court of Northern Samar with murder and illegal possession of firearms docketed as Crim. Cases Nos. A-600 (G.R. No. 106229) and A-601 (G.R. No. 106230), respectively, which by agreement of the parties were jointly tried as they arose from the same incident.

Prosecution witness Francisco Buensalida narrated that he and Nilo Bulan were together in the morning of 26 September 1982 on their way to get some bamboo poles. Bulan however proceeded to the side of the fishpond used by residents for defecating to answer the call of nature.^[1] It was at this moment when Rosales approached Bulan from behind and at a distance of six (6) meters fired at him with a shotgun. After he fell to the ground Rosales shot him again.^[2]

The certificate of death issued by Dr. Caridad T. Bulusan who autopsied Nilo Bulan revealed that the cause of death was internal hemorrhage due to gunshot wounds^[3] and that of the two (2) shots that hit the victim one (1) came from behind.^[4]

On the other hand, Leovigildo Rosales invoked self-defense. His version was that at about ten o'clock in the morning of 26 September 1982 he went to inspect the fishpond owned by a certain Bernardo Bulan but placed under his care as overseer. There, according to Rosales, he caught Nilo fishing. He fired his shotgun into the air to scare Nilo after the latter resolutely refused to leave. Nilo then struggled for the possession of the shotgun which fired and hit him.^[5]

The Information for illegal possession of firearm alleged that Rosales had under his custody and control an unlicensed 12-gauge Winchester shotgun bearing Serial No. 1628119.^[6] He claimed that the shotgun was given to him by the owner of the fishpond with authority to possess coming from Mateo Olindo, its alleged owner.^[7]

On 13 June 1984 the trial court rendered judgment in Crim. Case No. A-600 (G.R. No. 106229) finding accused Leovigildo Rosales guilty of homicide and imposing upon him the penalty of imprisonment of ten (10) years of *prision mayor* as minimum, to seventeen (17) years of *reclusion temporal* as maximum; to indemnify the heirs of the victim the amount of P20,000.00, without subsidiary imprisonment in case of insolvency; to suffer the accessory penalties provided for by law and to pay the costs.

The court likewise pronounced the accused guilty of illegal possession of firearms in Crim. Case No. A-601 (G.R. No. 106230) and sentenced him to a prison term of two (2) years as minimum, to four (4) years as maximum, with accessory penalties and to pay the costs.^[8]

Although treachery and evident premeditation were alleged in the Information^[9] they were not held by the trial court to have qualified the killing to murder. The court opined that since the killing was immediately preceded by an argument between the accused and the victim the accused could not have planned the killing without risk to himself arising from the defense which the offended party might have taken. The court likewise ruled that the circumstance of evident premeditation was absent since there was no sufficient lapse of time between the determination and execution of the act to allow the accused to reflect on the consequences of his act and still cling to his determination to kill.^[10]

The accused appealed to the Court of Appeals. However in a resolution dated 15 November 1989 the appellate court remanded the record of the case to the trial court for the retaking of the testimonies of six (6) witnesses out of the seven (7) presented by the defense. Except for the testimony of Rosalio Policarpio the transcript of which remained intact the testimonies of the other six (6) defense witnesses, namely, Leovigildo Rosales, Exequiel Gerero, Bernardo Bulan, Enrique Tan, Manuel Turla and Patria Resulta had to be retaken as they were reportedly lost. However, only the testimonies of witnesses Bernardo Bulan, Exequiel Gerero and accused Leovigildo Rosales were actually retaken as the Public Attorney's Office, then counsel for the accused, agreed to dispense with the testimonies of the other three (3) witness.^[11]

On 28 February 1992 the Court of Appeals affirmed the conviction of the accused with the modification that the civil indemnity to the heirs of the accused was increased to P50,000.00.^[12]

The accused now comes to us on a petition for review. He argues that the killing was in self-defense. Bulan was trespassing on the fishpond over which he was overseer.^[13] The firing of his shotgun into the air was a reasonable exercise of his authority as overseer and further showed he had no intention to kill. He had to defend himself when Bulan struggled to wrest possession of the gun since he could have been killed himself.^[14]

The accused also claims he was denied due process.^[15] He casts doubt on the Public Attorney's Office which represented him during his appeal, explaining that there is no clear showing that he understood the consequences of dispensing with the testimonies of three (3) of his witnesses. He contends that where the liberty of the accused is at stake, such as in a plea of guilt, there must be a clear showing that the accused is well aware of the import of his act and realizes fully the consequences thereof. ^[16]

After a meticulous review of the records, we cannot help concluding that the accused failed to establish self-defense. Having interposed self-defense, the accused admits the authorship of the killing and the burden of proof is shifted to him to establish that the killing was justified.^[17] But there was no unlawful aggression on

the part of the deceased. His act of grabbing the gun from the accused, assuming it to be the fact, cannot be considered unlawful aggression since it was done to protect himself; after all, the gun was pointed at him.^[18]

Apparently, the victim did not manifest any aggressive act which may have imperiled the life and limb of the accused. For the aggression must be of such character as to put in real danger the personal safety of the accused. The firing of the gun to scare the victim, in the first place, was completely unnecessary. He was not threatening to attack; he was unarmed.

The element of reasonable necessity of the means employed is also lacking in this case. Even if we assume that the first shot that hit the victim was accidental, there was certainly no necessity to shoot the victim for the second time after he had fallen to the ground. The nature and number of the wounds inflicted by an assailant are constantly considered to negate self-defense.^[19]

Under the circumstances, we are constrained to modify the decision of the lower courts as we find the accused guilty instead of murder qualified by treachery. The Information for murder alleged that the accused killed Nilo Bulan with treachery and evident premeditation.^[20] While the trial court and the appellate court below found no treachery and gave credence instead to the version of the defense that the shooting was preceded by an oral argument between the protagonists, we are of the conviction that based on the evidence on record treachery was indubitably established. Prosecution witness Buensalida positively testified that Bulan was shot at a distance of six (6) meters from behind and was shot again after he fell to the ground.^[21] This was corroborated by the findings of the medical expert that the victim was shot twice and one of them came from behind.^[22] An eyewitness' account that jibes with the autopsy findings is credible.^[23] Treachery exists when a defenseless victim was shot or stabbed from behind showing that the accused had employed means of attack which offered no risk to himself from any defensive or retaliatory act which the victim might have taken.^[24]

As regards the allegation of the accused that he was in effect deprived of due process when the Public Attorney's Office waived the retaking of the testimonies of three (3) of his witnesses, suffice it to say that the retaking of testimonies may not be likened to that of an accused pleading guilty to a capital offense. It has consistently been advised that judges should be extra solicitous in seeing to it that when an accused pleads guilty he understands fully the meaning of his plea and the import of an inevitable conviction since any mistake or misunderstanding on his part, especially in capital offenses, as to the full meaning of his plea may thus prove irreversibly fatal to him.^[25] In dispensing with the retaking of the testimonies of witnesses, there can be no possibility of a conviction based solely on an improvident plea. Anyway, the accused amply presented his defense with his own testimony and those of two (2) other available witnesses. Hence it cannot be said that his right to due process was curtailed.

There is no disputing the fact that accused Leovigildo Rosales was not the owner of the shotgun with which he shot Nilo Bulan. Yet, as caretaker of the fishpond he carried the gun around without any license or permit issued by any competent authority. For sure, his *animus possidendi* was established.