

**[ CA-G.R. CR HC No. 00708-MIN, January 22, 2014 ]**

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
CESAR M. JALLORIN, JR., ACCUSED-APPELLANT.**

**D E C I S I O N**

**LOPEZ, J.:**

Before Us is the Decision<sup>[1]</sup> dated August 5, 2008 of the Regional Trial Court, Branch 11, Sindangan, Zamboanga del Norte, which found accused-appellant Cesar M. Jallorin, Jr. guilty beyond reasonable doubt of Murder in Criminal Case No. S-1358 and Slight Physical Injuries in Criminal Case No. S-1364. The dispositive portion of the Decision reads:

“WHEREFORE, the foregoing duly considered, the Court finds accused Cesar Jallorin, Jr.—

(a) GUILTY of the crime of murder in Criminal Case No. S-1358 and sentences him to suffer the penalty of *reclusion perpetua* and to pay the heirs of Pat. Arelie Alburo the following amounts: P50,000 as indemnity for his death; P50,000 as moral damages; P25,000 as exemplary damages; P25,000 as temperate damages in lieu of an award of loss of earning capacity; and P20,000 as temperate damages in lieu of actual or compensatory damages; and

(b) GUILTY of slight physical injuries in Criminal Case No. S-1364, and there being no mitigating or aggravating circumstance, sentences him to the penalty of imprisonment of twenty (20) days of *arresto menor* medium, with no civil liability as the complainant did not adduce evidence to prove her earning capacity and her hospitalization/medical expenses. Her claim for moral and exemplary damages has no legal basis.

If warranted, he shall be credited with the period of his preventive imprisonment in accordance with law.

Costs against the accused.

SO ORDERED.”<sup>[2]</sup>

The conviction of accused-appellant arose from the following Informations:

CRIMINAL CASE NO. S-1358

(Murder)

"The undersigned, Acting Second Assistant Provincial Fiscal, accuses CESAR JALLORIN, JR., of the crime of Murder committed as follows:

That, in the evening, on or about the 4<sup>th</sup> day of May, 1983, in the Municipality of Sindangan, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, armed with a deadly weapon, and with intent to kill by means of treachery and evident premeditation did, then and there willfully, unlawfully and feloniously assault, attack and stab one PAT. ARELIE ALBURO, thereby inflicting upon him multiple stab wounds in the different vital parts of his body which caused his instantaneous death; that as a result of the commission of the said crime, the heirs of the herein victim suffered the following damages, viz:

Indemnity for victim's death ....	P12,000.00
Loss of earning capacity	5,000.00
.....	
Moral and exemplary damages ..	<u>20,000.00</u>

P37,000.00

CONTRARY TO LAW, (Violation of Article 248, Revised Penal Code), with the qualifying circumstances of treachery and evident premeditation."<sup>[3]</sup>

CRIMINAL CASE NO. S-1364

(Frustrated Murder)

"The undersigned, Acting Provincial Fiscal, accuses CESAR JALLORIN, JR y MACIAS of the crime of FRUSTRATED MURDER, committed as follows:

That, in the afternoon, on or about the 4<sup>th</sup> day of May, 1983, in the Municipality of Sindangan, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused armed with a hunting knife with intent to kill by means of treachery and evident premeditation did, then and there willfully, unlawfully and feloniously assault, attack and stab one VILMA VERGARA, thereby inflicting upon her an 'incised wound between the thumb and index finger (R)', which would ordinarily cause her death; thus performing all acts of execution which would have produced the crime of Murder as a consequence, but which nevertheless, did not produce it for reason of causes independent of the will of the herein accused, that is, the ability of the victim to escape from his assailant and the timely and able medical assistance rendered to the said victim which prevented her death; that as a result of the commission of the said crime, the herein victim suffered the following damages, viz:

Hospitalization .....	P5,000.00
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Loss of earning capacity....	5,000.00
Moral and exemplary damages	<u>3,000.00</u>

P10,000.00

CONTRARY TO LAW, with the qualifying circumstances of treachery and evident premeditation.”<sup>[4]</sup>

On the same day of May 4, 1983, accused-appellant was arrested and brought to the Sindangan Police Station, Zamboanga del Norte.<sup>[5]</sup>

On August 28, 1985 however, the prosecution manifested to the trial court that accused-appellant escaped from prison.<sup>[6]</sup> Consequently, an alias warrant for his arrest was issued.<sup>[7]</sup> The case was thereafter archived to avoid its indefinite pendency without prejudice to its reinstatement as soon as accused-appellant is re-arrested.<sup>[8]</sup>

On August 20, 2001,<sup>[9]</sup> accused-appellant was re-arrested.<sup>[10]</sup>

Thereafter, the two cases were ordered consolidated and joint trial ensued.<sup>[11]</sup>

On December 5, 2001, accused-appellant was arraigned and pleaded not guilty to the crimes charged.<sup>[12]</sup>

The prosecution presented Vilma Vergara, Magdalena Vergara, Rosalie Vergara-Alburo and Dr. Marcelito Lacaya in order to establish the following:

On May 4, 1983 at 4:30 o'clock in the afternoon, Pat. Arelie Alburo (Alburo for brevity) together with his mother-in-law Magdalena Vergara (Magdalena for brevity) and sister-in-law Vilma Vergara (Vilma for brevity) were on their way to his residence at *Barangay* Sta. Cruz, Sindanagan, Zamboanga del Norte.<sup>[13]</sup> The group passed by the house of a certain Nene Maglangit where few people were preparing the dancing hall in celebration of the fiesta of the *barangay*.<sup>[14]</sup> Among the people preparing the dancing hall was Ben Saligumba. The latter called up and thereafter approached Alburo. While conversing with each other, Vilma saw accused-appellant thrust his hunting knife at Alburo's back several times. Accused-appellant next pushed Alburo which caused him to fall on the ground. Thereafter, Alburo drew his service handgun from his waist. Accused-appellant grappled and was successful in gaining possession of the handgun from Alburo. Subsequently, accused-appellant fired shots at the side of Alburo without hitting him. Vilma approached Alburo and asked him "*Noy, naunsa man ka?*" (Noy, what happened to you?). It is at this juncture that accused-appellant thrust his hunting knife to Vilma hitting her right hand.<sup>[15]</sup> Accused-appellant then examined Alburo's eyes, afterwards, he continued to stab Alburo.<sup>[16]</sup>

Few minutes later, Pat. Damaso Tigmo (Pat. Tigmo for brevity) arrived at the crime scene with accused-appellant still holding the hunting knife and handgun. Pat. Tigmo told accused-appellant to surrender and ordered him to put the weapons down to which the latter obeyed without resistance.<sup>[17]</sup>

Magdalena and Vilma, among others, brought Alburo to the hospital but the latter was already dead by then. According to the Medico Legal Certification<sup>[18]</sup> issued by Dr. Manuel R. Simon of the Sindangan General Hospital, Alburo sustained multiple stab wounds, 12 wounds on the anterior side and 4 wounds on the posterior. For her part, Vilma was found to have incised wound between the thumb and index finger of her right hand as shown by Medico Legal Certification<sup>[19]</sup> issued by the same Dr. Simon. She was no longer confined and immediately after she was treated, she was allowed to go home.<sup>[20]</sup> It was Dr. Marcelito Lacaya, Chief of Hospital of Sindangan General Hospital who brought, identified and certified the two Medical Legal Certifications issued by Dr. Simon as the records on file in the hospital's possession. Dr. Lacaya testified that Dr. Simon is no longer working at the Sindangan General Hospital as he was already promoted as a Chief in a particular hospital at the Municipality of Liloy, Zamboanga del Norte.<sup>[21]</sup>

On the other hand, accused-appellant, in defense of himself, testified in order to establish the following:

Accused-appellant does not deny stabbing Alburo but contended though that he did so in self-defense.<sup>[22]</sup>

On May 4, 1983 at around 4:00 o'clock in the afternoon, accused-appellant was one of the volunteers at *Barangay* Sta. Cruz, Sindangan, Zamboanga del Norte who helped with the fencing of the dancing hall in preparation for the coronation night later that evening. Accused-appellant was then with his wife, his sister and his brother-in-law Ben Salimbagat. Accused-appellant was then cleaning bamboos with the use of his bolo when Alburo approached and collared him. Alburo, who was drunk and was in a belligerent manner, pointed a revolver at accused-appellant. The latter wrested the revolver from Alburo and a shot went off. In defense of himself, accused-appellant stabbed Alburo on the left breast with the bolo he was holding. Alburo fell down and attempted to shot accused-appellant. Accused-appellant again stabbed Alburo. Immediately thereafter, the police arrived and he voluntarily surrendered.<sup>[23]</sup>

Accused-appellant testified that nobody tried to stop and pacify him and Alburo. He also claimed that he and Alburo do not hold any grudges against each other which could be the reason why Alburo tried to kill him. As regards Vilma, accused-appellant was not aware that he was able to hit her during the incident.<sup>[24]</sup>

After the parties presented their respective pieces of evidence, the trial court rendered the assailed Decision<sup>[25]</sup> dated August 5, 2008 finding accused-appellant guilty beyond reasonable doubt of Murder qualified by treachery in Criminal Case No. S-1358 and Slight Physical Injuries in Criminal Case No. S-1364.

Aggrieved, accused-appellant is now before Us raising his sole assignment of error:

"THE COURT A QUO GRAVELY ERRED IN CONVICTING APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONBALE DOUBT."<sup>[26]</sup>

The appeal is partly meritorious.

As regards Criminal Case No. S-1358.

For a person to be convicted of murder under Article 248<sup>[27]</sup> of the Revised Penal Code,<sup>[28]</sup> the following elements must concur: (1) that a person was killed; (2) that the accused killed him; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 and (4) the killing is not parricide or infanticide.<sup>[29]</sup>

In this case, accused-appellant admitted that he was the person who stabbed Alburo; and the killing was clearly neither parricide<sup>[30]</sup> nor infanticide.<sup>[31]</sup> The remaining questions to be resolved therefore are as follows: (a) whether or not accused-appellant acted in self-defense in stabbing Alburo; (b) whether or not the killing was attended by treachery that would justify the trial court's conviction of murder; and (c) whether or not the mitigating circumstance of voluntary surrender can be appreciated in accused-appellant's favor.

The Supreme Court holds that when an accused admits killing the victim but invokes self-defense to escape criminal liability, the accused assumes the burden to establish his plea by *credible, clear and convincing evidence*; otherwise, conviction would follow from his admission that he killed the victim.<sup>[32]</sup> To establish self-defense, accused-appellant must prove the confluence of the following essential requisites: a) unlawful aggression on the part of the victim; b) lack of sufficient provocation on the part of the person defending himself; and c) reasonable necessity of the means employed to repel or prevent it.<sup>[33]</sup>

Accused-appellant contends that the first element of unlawful aggression is present here because Alburo's act of seizing his collar and pointing a gun at him at a very short distance clearly constitutes an impending danger on his life. Hence, he has no choice but to defend his life by stabbing Alburo with the bolo in his hand.<sup>[34]</sup>

We are not convinced.

Accused-appellant's claim that it was Alburo who was the unlawful aggressor is uncorroborated. He failed to present another witness who could testify on the manner Alburo allegedly attacked him. More so that as testified to by him, there are some people in the place of the incident which included his wife, his sister and his brother-in-law Ben Salimbagat. Indeed, if accused-appellant truly maintains his innocence that he acted in self-defense as he insists, there would have been no issue on his family members testifying in his favor.

Furthermore, considering the time the incident took place when Alburo allegedly seized accused-appellant's collar, pointed a gun at him and grappled possession of the same, the commotion would have certainly attracted the attention of the people around them. But for reasons only known to him, accused-appellant failed to invoke the trial court's authority to issue subpoena to these people so they can testify in court to prove that he indeed merely defended himself. Accused-appellant failed to explain why no one came to his rescue. To be sure, ingrained in Our jurisprudence is the rule that self-defense cannot be justifiably appreciated when it is uncorroborated by independent and competent evidence or when it is extremely doubtful by itself.<sup>[35]</sup>

For accused-appellant's failure to prove by clear and convincing evidence that Alburo is the unlawful aggressor therefore, his claim of self-defense cannot be sustained.<sup>[36]</sup> Certainly, unlawful aggression is the indispensable element of self-defense