

TWENTY-SECOND DIVISION

[CA-G.R. CR NO. 00956-MIN, January 22, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
HELLODORO M. VALDESCO ACCUSED-APPELLANT.**

DECISION

INTING, J.:

This is an appeal from the March 8, 2011 Amended Decision^[1] of the Regional Trial Court Branch 8, Valencia City, Bukidnon in Criminal Case No. 15019-05 for Homicide, decreed as follows:

"WHEREFORE, Judgment is issued finding accused Hellodoro Valdesco guilty beyond reasonable doubt of the crime of HOMICIDE as defined by Article 249 of the Revised Penal Code with incomplete defense of relatives and imposes upon him an indeterminate penalty of Four (4) years to Eight (8) years and to pay the heirs of the victim the amount of P75,000.00 for civil indemnity; Moral damages of P75,000.00 and actual damages of P25,000.00 which needs no proof other than the victim's death.

He shall serve his penalty in the national penitentiary of Davao penal colony.

SO ORDERED."

Accused Hellodoro Valdesco's conviction stemmed from an Information dated March 9, 2005^[2] which partly reads:

"That on or about 5:00 o'clock, more or less, in the afternoon of August 8, 2004 particularly at Purok 4, Mailag, Valencia City, Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill with the use of a 1x2 piece of wood, did then and there willfully, unlawfully and criminally strike BIENVENIDO SAUSAL, hitting his left head, which eventually caused his death, to the damage and prejudice of the legal heirs of BIENVENIDO SAUSAL in such amount as may be allowed by law."

On the February 6, 2006 arraignment, accused Hellodoro, duly assisted by counsel, pleaded not guilty to the offense charged.^[3]

Hellodoro is presently out on bail.^[4]

The facts of the case are as follows:

The prosecution presented Reynaldo Rama, Jocelyn Labaon and Emelita Ipanag to recount the events that occurred on the fateful afternoon of August 8, 2004. On that

date, at about 4:00 to 4:30 p.m., Reynaldo was tending his store when he heard a commotion outside, just beside the road. He went out to check the commotion. At about 8 to 9 meters away from where he stood, he saw Hellodoro and herein victim Bienvenido Sausal (Bienvenido) fighting with Hellodoro hitting Bienvenido's head on the left side with a wood about a meter long. Bienvenido staggered while walking away from Hellodoro. The incident happened about 3 to 4 meters away from Hellodoro's house.^[5]

Meanwhile, Jocelyn was vending barbecue on the side of the road when the incident occurred. She testified that Bienvenido was only walking when Hellodoro followed him from behind and hit him (Bienvenido) on the head with a piece of wood. She added that she did not see Bienvenido grab a girl by the hair; and maintained that the victim was walking alone at that time. Bienvenido purportedly fell after the blow. Jocelyn also recalled that she already heard a thudding sound inside Hellodoro's house before Hellodoro and Bienvenido went outside but she could not see what was going on inside the house.^[6]

Emelita, the mother of Bienvenido, was only informed of the fateful incident involving her son by one Antonio Alvarez. She immediately went to the area where her son was allegedly mauled by Hellodoro. On the way, she met a kid who told her that her son was already at Sajulga's house where he was being treated. Emelita went to Sajulga's house and saw Bienvenido with a bleeding nose. When she asked him who were responsible for his injuries, Bienvenido told her that it was Hellodoro, his sister and his son. She then took Bienvenido home to rest. The next day, at about 10:00 a.m., Emelita brought Bienvenido to a clinic for treatment but the doctor refused after he saw him with a head injury. Emelita then transferred her son to Laviña Hospital where the medical staff attended to him. At about 4:00 in the morning, Bienvenido's condition worsened. The doctors advised them to bring him to Cagayan de Oro City. At about 9:00 a.m., they brought Bienvenido to Cagayan de Oro Medical Center. Unfortunately, the doctors told Emelita that they could not do anything about Bienvenido's situation; and that it would be useless to operate on him. Bienvenido eventually died on August 11, 2004. When Bienvenido was embalmed, Emelita noticed bruises on his body. During the wake, a representative from Hellodoro allegedly visited Emelita and offered a settlement.^[7]

Dr. John Varias, the doctor who issued Bienvenido's death certificate was also presented. Per death certificate, Bienvenido died due to multiple head injuries secondary to alleged mauling incident.^[8] Nevertheless, the doctor admitted that he did not personally attend to Bienvenido and that the information written on the certificate was only based on what was relayed to him six (6) days after the victim's death. He made the certificate only for burial purposes.^[9]

A deposition was taken on Dr. John Mata, the physician who attended to Bienvenido at the Cagayan de Oro Medical Center. He attested that Bienvenido was already unconscious when he was treated of his severe injuries. His brain was no longer functioning because of a severe head blunt trauma caused by a hard object.^[10]

On the other hand, accused Hellodoro maintains that on August 8, 2004, he attended the Parents Teachers Association induction wherein he was elected as president. At about 5:00 p.m., he went home only to find his sister Lilia Valdesco in the living room grappling with Bienvenido, who was pulling Lilia by the hair. Hellodoro asked Bienvenido of the commotion. But instead of answering, Bienvenido

got hold of a bolo from a pail placed beside the door and tried to hack Hellodoro. However, Hellodoro was able to parry the blow causing the bolo to slip from Bienvenido's grip. Still, it hit Hellodoro on his nose bridge and right arm. Bienvenido then punched Hellodoro on his right eye and pushed him against the wall. Bienvenido grabbed Lilia again by her hair and dragged her outside the house. Hellodoro then took a one (1) meter piece of wood (a 1x2 wood used as an inner lock in their house), followed Bienvenido outside the house, and hit him on the head. It was only then that Bienvenido freed Lilia and walked towards Sajulga's house. By that time, Perlita Valdesco (Hellodoro's wife) arrived. Upon seeing the commotion, Perlita asked for help. The next day, Hellodoro went to the police station and reported the incident. He also had a medical check-up.^[11] Per medical certificate dated August 9, 2004, Hellodoro was found to have a hematoma on the peri-orbital area, right eye horizontal, and an abrasion on his nasal bridge.^[12]

Hellodoro explained that he opted to use the wood instead of the bolo; and that he hit Bienvenido only once because he had no intention to kill him but only for him to let go of Lilia.^[13]

The defense also presented Perlita to corroborate her husband's defense. Perlita averred that she and her husband attended the PTA induction and went home about 5:00 p.m. But she told her husband to go home ahead as she had to tend to her carabao first. When she was on her way home, she heard shouts coming from their house and saw Bienvenido pulling Lilia by the hair and dragging her outside the house. Perlita called for help. She then saw her bleeding husband hit Bienvenido on the left side of the head with a piece of wood. After which, Bienvenido let go of Lilia and walked to Sajulga's house threatening to get back at Hellodoro.

Hellodoro's neighbor, Florentino Saren also testified and deposed that on August 8, 2004 at around 4:00 p.m., he was at his house when Bienvenido, who was drunk and carrying a more than half-full Tanduay long-neck bottle, came by looking for Florentino's son whom he wanted to invite to a drinking spree. At that time, Florentino's son was asleep so that Florentino told Bienvenido to just go home and sleep instead. However, Bienvenido said that he would just go to Lilia's house, adding that that woman is tough and that he will see what she would do now.^[14]

The court *a quo* rendered the assailed amended decision finding that the accused had the deliberate intent to kill by hitting the victim with a piece of wood that caused the latter's death; that as between the testimonies of the defense witnesses which include that of the accused's wife, and the testimonies of the prosecution witnesses who were disinterested persons, the court *a quo* was inclined to believe the latter; that the testimony of the accused was only corroborated by his wife; and that contrary to their claims that the victim was hit only once, the medical certificate stated that the victim died of multiple head injuries. The court *a quo* further ruled that the accused is entitled only to the privileged mitigating circumstance, an incomplete defense of relative; that although the provocation was started by the victim, there was no showing that he endangered Lilia's life or that he used a weapon; that the means used by the accused was not reasonable; and that such act cannot be considered a defense because of the multiple injuries sustained by the victim as a result of the fatal blows made by the accused on him.

Hence, this appeal assigning the following errors, to wit:

I.

THE HONORABLE LOWER COURT ERRED IN NOT FINDING THAT THE ACCUSED HAD NO INTENT TO KILL BIENVENIDO SAUSAL;

II.

THE HONORABLE LOWER COURT ERRED IN FINDING THAT MULTIPLE HEAD INJURIES WAS THE CAUSE OF DEATH OF BIENVENIDO SAUSAL;
AND

III.

THE HONORABLE LOWER COURT ERRED IN FINDING INCOMPLETE DEFENSE OF RELATIVE BY THE ACCUSED.

Our Ruling.

We affirm the conviction but with slight modification.

In the case at bench, the accused-appellant admits hitting Bienvenido on the head using a piece of wood. As clearly established, Bienvenido died because of severe head blunt trauma resulting from a blow to his head caused by a hard object.^[15] Apparently, the blow inflicted by the accused-appellant on the victim resulted in the latter's untimely death after a few days. Nevertheless, accused-appellant contends that he was just acting in defense of his sister, who was allegedly grabbed by the hair by Bienvenido and dragged outside the house.

The Revised Penal Code, Article 11, provides:

Article 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."

2. *Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or his relatives by affinity in the same degrees and those by consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the provocation was given by the person attacked, that the one making defense had no part therein.* (italics for emphasis)

In cases where the accused has admitted the killing, it is incumbent upon the accused to prove the justifying circumstances to the satisfaction of the court in order to be relieved of any criminal liability.^[16] Like in self-defense, the burden is on the accused to show that he is legally justified in killing the victim or inflicting injury to him. The defense must be established by clear and convincing evidence and when