

SIXTH DIVISION

[CA-G.R. CR. NO. 33615, June 18, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LEONARDO HENRY GARCIA Y ALVAREZ, ACCUSED-APPELLANT.**

D E C I S I O N

CRUZ, R.A., J.:

THE CASE

This is an appeal interposed by Leonardo Garcia from the Decision dated July 9, 2010 by the Regional Trial Court ("RTC") of Manila, Branch 20 in Criminal Case No. 98-169236, the dispositive portion of which reads, as follows:

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"Premises considered, the Court finds the accused Henry Garcia y Alvarez **GUILTY** beyond reasonable doubt of the offense of homicide and is hereby imposed an indeterminate penalty of six (6) years and one (1) day of *prision mayor* as minimum to fourteen (14) years and one (1) day of *reclusion temporal* as maximum.

He is likewise ordered to pay the heirs of the victim Wilfredo Ortillano, Jr. P132,500.00 as actual damages, P50,000.00 for moral damages and P50,000.00 as civil indemnity.

SO ORDERED."

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THE ANTECEDENTS

Leonardo Garcia was charged before the RTC with the crime of homicide defined and penalized under Article 249^[1] of the Revised Penal Code under the following information:

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"That on or about the 2nd day of December 1998, in the City of Manila, Philippines, the said accused, conspiring and confederating with another whose true name, identity and present whereabouts are still unknown and helping each other did then and there, willfully, unlawfully and feloniously with intent to kill, attack, assault and use personal violence upon one WILFREDO ORTILLANO, JR. Y MANUCAY by then and there shooting him on the head and on the different parts of his body with a gun, thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his/her death thereafter. Contrary to law."

^[2]

When arraigned on August 25, 1999, in Criminal Case No. 98- 169236, the accused pleaded "not guilty" to the crime charged.^[3] Thereafter, pre-trial was held and consequently terminated^[4], and trial of the case ensued.

From the evidence adduced by the prosecution, it appears that on December 2, 1998, at about 12 a.m., Wilfredo Ortillano, Jr. and Leonardo Garcia were seen outside of Cowboy Grill Club having an altercation. Immediately after that, Wilfredo Ortillano, Jr. ran away from Cowboy Grill Club and headed towards Arquiza St. Leonardo Garcia chased him and shot him. Wilfredo Ortillano, Jr. fell to the ground and Leonardo Garcia shot him again and hit his head with the gun. Thereafter, Avel Sualibio approached the victim, kicked and punched him. When the police arrived, Leonardo Garcia and Avel Sualibio were boarded to the police car. Wilfredo Ortillano, Jr. was brought to the hospital but was pronounced dead on arrival.

On June 7, 2000, while on the witness stand, Remar Sandoval, a pedicab driver and parking boy, testified that the victim had a .45 caliber gun on his waist. Leonardo Garcia grabbed the gun from the victim and the latter ran away. The former chased the victim and shot him. After the victim fell with his face on the ground, Leonardo Garcia shot him again.

Remar Sandoval's uncle, Alfonso Guanzon, who was also a parking boy, testified that he saw Wilfredo Ortillano, Jr. and Leonardo Garcia arguing outside of Cowboy Grill Club. He said that the shorter man (Wilfredo Ortillano, Jr.) ran towards Arquiza St., and was chased by the taller man (Leonardo Garcia). He heard two gunshots and when he approached the crime scene, he saw Wilfredo Ortillano, Jr. sprawled on the ground. He saw Leonardo Garcia and Avel Sualibio beat and kick the victim.

Police Inspector Jose Bagkus, identified the Referral Letter^[5], Arrest Report^[6] and Booking Sheet^[7] in relation to the incident.

Dr. Emmanuel Aranas, a medico-legal officer of the Philippine National Police Crime Laboratory, Camp Crame, Quezon City, also took the witness stand and testified that: (1) he conducted the autopsy of the cadaver of Wilfredo Ortillano, Jr.; (2) he prepared the Autopsy Report; (3) the victim sustained injuries consisting of lacerated wounds, abrasion, hematoma and gunshot wounds; (4) wounds marked as 6,8,9 of the Autopsy Report are gunshot wounds; (5) fatal wound marked 6 is a gunshot wound on the left side of the chest piercing thru the upper portion of the left lung, left side of the heart and middle portion of the right lung; a deformed slug exited and was recovered at the back; (6) wound marked 8 is a gunshot wound at the distal portion of the left arm causing laceration in the underlying soft tissues with an exit also at the same area of the arm; (7) wound marked 9 is a gunshot wound found at the proximas portion of the left forearm which fractured the bone of the left forearm specifically the left ulna and then made an exit; (8) the gun shot wounds were not self-inflicted.

On the other hand, the defense presented Michael Lirio, the accused and Avel Sualibio as witnesses who had a different version of events which transpired on December 2, 1998.

Michael Lirio is a valet parking attendant of Hotel La Corona located at the corner of M.H. Del Pilar and Arquiza Streets. He testified that on December 2, 1998, at about

past midnight, he saw Wilfredo Ortillano, Jr. restraining Leonardo Garcia by placing his arm around his neck^[8] and pointing a gun at him at the corner of M.H. Del Pilar and Arquiza Streets. He observed that Leonardo Garcia had blood on his face. Leonardo Garcia struggled to free himself and ran away but Wilfredo Ortillano Jr. shot him. However, the gun did not fire. Leonardo Garcia turned his back and while Wilfredo Ortillano Jr. was in the act of cocking the gun, he jumped towards him. They scuffled for the possession of the gun and he heard gun shots. Both men fell to the ground and later on, Leonardo Garcia stood up and introduced himself as a policeman.

Accused Leonardo Garcia and Avel Sualibio both testified that they went to Cowboy Grill Club to celebrate. When they were about to leave, Avel Sualibio tried to retrieve his gun from the counter. Wilfredo Ortillano Jr. attempted to get Avel Sualibio's gun but the guard at the counter refused. They had a disagreement and when Leonardo Garcia intervened and introduced himself as a policeman, Wilfredo Ortillano Jr.'s ire turned to him. Wilfredo Ortillano Jr. restrained Leonardo Garcia by placing his arm around his neck^[9] and brought him outside Cowboy Grill Club. Thereafter, Wilfredo Ortillano Jr. hit his head with a gun. He fell on his knee and when he tried to stand up, Wilfredo Ortillano, Jr. pointed the gun at him. He ran towards Arquiza St. and stopped when he noticed blood flowing from his head. Wilfredo Ortillano Jr. caught up with him, pointed a gun at him and dragged him to Arquiza St. cor. M.H. Del Pilar St. Wilfredo Ortillano Jr. aimed the gun at him and pulled the trigger but it did not fire. He immediately jumped towards him and they scuffled for the possession of the gun. The gun fired and they both fell to the ground. Thereafter, he introduced himself as a policeman.

After the trial, the RTC rendered the assailed decision. In his appeal before us, he poses the following:

THE ASSIGNED ERRORS

I.

WHETHER OR NOT THE ACCUSED WAS DENIED DUE PROCESS WHEN THE COURT A QUO GRANTED THE FORMAL OFFER OF EVIDENCE OF PLAINTIFFAPPELLEE WITHOUT CONCURRENCE FROM THE PUBLIC PROSECUTOR;

II.

WHETHER OR NOT THE ACCUSED WAS DENIED DUE PROCESS WHEN THE COURT A QUO DENIED HIS DEMURRER TO EVIDENCE AND MOTION FOR RECONSIDERATION THERETO DESPITE FAILURE OF THE PROSECUTION TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT;

III.

WHETHER OR NOT THE COURT A QUO ERRED IN CONVICTING THE ACCUSED FOR HOMICIDE DESPITE THE PIECES OF EVIDENCE SHOWING HIS INNOCENCE AND THAT HE ACTED IN SELFDEFENSE.

The accused, now the appellant before us, argues that he was denied due process when the court *a quo* acted on the formal offer of evidence and the demurrer to

evidence at the same time. At the time the demurrer to evidence was submitted for the resolution of the court, the prosecution had already rested its case and no documentary evidence was ever admitted by the court. In denying the demurrer to evidence, the court did not specify how the prosecution had sufficiently proven its case. The demurrer to evidence should have been granted because the prosecution failed to prove his guilt beyond reasonable doubt.

He insists that the court *a quo* placed him in a situation which he never admitted. Accused only admitted the scuffling but not the killing of the victim. The court violated his right to be presumed innocent until proven guilty. The accused avers that it is not his fault that he did not submit himself for medical examination. He asseverates that he received medical treatment for his head injuries but the investigator did not submit the medico-legal certification in connection with this.

He also argues that he never admitted the killing of the victim. The theory of self-defense only surfaced when the court denied the motion for reconsideration to his demurrer to evidence. The fact that he is taller than the victim does not mean that he is also of bigger built so as to arrive at the conclusion that he could have subdued the victim's aggression effortlessly. Contrary to the finding of the court *a quo*, he did not deviate from what he experienced. He was not able to pinpoint how many shots were fired because of the suddenness of the shooting. The court failed to consider that the laceration and the hematoma could have been caused by the victim's fall to the ground. His claim that there was scuffling and self defense is consistent with the tattooing present in the entry wound of one of the gun shot wounds. That the gunshot wounds are all on the left side of the body proves that there was scuffling. Accused-appellant explains that he did not immediately bring the victim to the hospital because of temporary shock. While it is true that there was no proof as to who pulled the trigger, it was established that victim was the one holding the gun prior to the scuffling. It is not for the accused-appellant to ask that he be subjected to paraffin test but it is the investigator that should have subjected the parties thereto.

He contends that self-defense was sufficiently established. First, there was unlawful aggression on the part of the victim when he restrained him by putting his arm around his neck and pointing a gun at him. He even pulled the trigger but the gun did not fire. It is also worthy to note that the accused was unarmed at the time of the incident. Second, his act of jumping towards Wilfredo Ortillano, Jr. was a reasonable necessity to prevent or repel the unlawful aggression. Third, there was no provocation on his part as he does not even know Wilfredo Ortillano, Jr.

On the other hand, the Office of the Solicitor General ("OSG") counters that accused-appellant was afforded due process during the trial. Prosecution of the criminal case against accused-appellant was conducted by the private prosecutor under the direct supervision of the public prosecutor. Absent any revocation or withdrawal of the authority given the private prosecutor, he can prosecute the case until the end. He was also represented by a counsel all throughout the proceedings. He was even given the chance to file a motion for reconsideration after his demurrer to evidence was denied.

OSG claims that accused-appellant makes inconsistent arguments. He admits to scuffling for the possession of the gun but denies killing the victim and then claims self-defense. To avail of the benefit of self- defense, accused-appellant has to prove: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the

means employed; (3) lack of sufficient provocation on his part. There was no unlawful aggression as there was no proof of any assault against Leonardo Garcia by Wilfredo Ortillano, Jr. No medical report was presented to prove that he sustained injuries resulting from such assault. Multiple gunshots are by no means reasonable necessity to stave off the alleged assault. Moreso in this case since Leonardo Garcia is taller than Wilfredo Ortillano, Jr. The fact that the post-mortem record did not indicate gun powder burns on the victim and the claim of self-defense point out to the conclusion that it was accused-appellant who fired the gun. Even assuming that unlawful aggression came from Wilfredo Ortillano, Jr., this became immaterial when it stopped after the accused-appellant jumped towards him, scuffled for the possession of the gun and fired the same. After the first shot, unlawful aggression stopped. There is also no proof that he did not provoke the victim into assaulting him since he came from a celebration presumably where alcohol is served. OSG claims that the defense of self-defense is inherently weak because it can be easily fabricated and difficult to prove.

The OSG argues that the accused-appellant's guilt for the crime of homicide has been proven beyond reasonable doubt. The testimonies of the witnesses are credible and show no improper motive. The findings of facts of the trial court are accorded the highest respect, if not regarded as conclusive on appeal.

The OSG made the following recommendations: (1) Pursuant to the Indeterminate Sentence Law, the proper penalty should be six years and one day of *prision mayor*, as minimum to seventeen years four months of *reclusion temporal* in its medium period, as maximum; (2) Pursuant to prevailing jurisprudence, civil indemnity *ex delicto* should be P75,000.00.

OUR RULING

The appeal is not entirely without merit.

The accused-appellant was not denied due process. A perusal of the records reveal that the proceedings in Criminal Case No. 98- 169236 has always been under the direction and control of the public prosecutor consistent with the provision of Section 5, Rule 110 of the Revised Rules of Criminal Procedure as amended by A.M. No. 02- 2- 07 dated April 10, 2002^[10]. To trace, the prosecution of the criminal action for homicide had always been under the direction and control of the public prosecutor namely, Assistant City Prosecutor Roslyn Rabara-Tria^[11], Julita Danting^[12], Armando Velasco^[13], Leo Lee^[14], Ferrer Co^[15] and John Erick Flordeliza^[16]. In the transcript of stenographic notes dated September 12, 2000, the public prosecutor categorically authorized the private prosecutor to prosecute the case under her direction and control. This authority was neither revoked nor withdrawn, thus the private prosecutor continued to prosecute the case under the direction and control of the public prosecutor up to end of the trial. Hence, at the time the private prosecutor moved for time to file a written offer of exhibits and he was under the direction and control of the public prosecutor.

Neither was the accused-appellant denied due process when the lower court denied his demurrer to evidence. A demurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue.^[17] The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in