

FOURTH DIVISION

[CA-G.R. CR-HC No. 05887, July 31, 2014]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
AUGUSTO F. GALLANOSA, JR., ACCUSED-APPELLANT.**

DECISION

GONZALES-SISON, M., J:

This is an appeal^[1] from the decision of the Regional Trial Court of Irosin, Sorsogon, Branch 55 (trial court) dated 21 November 2011 in Criminal Case Nos. 1631-32, which found herein appellant Augusto F. Gallanosa, Jr., alias "Aday" (appellant) guilty beyond reasonable doubt for two (2) counts of murder.

Briefly, the facts of the case, are as follows:

On 12 March 2003, two (2) separate Informations for murder were filed by the Office of the Provincial Prosecutor of Sorsogon against appellant. The accusatory portions of the Informations read:

Criminal Case No.1631

"That on or about 6th day of November, 2002 at around 3:00 o'clock in the afternoon at Barangay Banogao, Municipality of Matnog, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and treachery and abuse of superior strength accused Augusto Gallanosa, Sr. armed with stones and accused Augusto Gallanosa, Jr. armed with a bladed weapon, conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully and feloniously attack, assault and stab one Nonilon Frencillo, Jr. hitting and inflicting upon the latter mortal wounds which directly caused his death, to the damage and prejudice of his legal heirs.

CONTRARY TO LAW."^[2]

Criminal Case No. 1632

"That on or about 6th day of November, 2002 at around 3:00 o'clock in the afternoon at Barangay Banogao, Municipality of Matnog, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and treachery and abuse of superior strength; Accused Augusto Gallanosa, Sr., Nonito Gallanosa, Minda Gallanosa and Gina Gallanosa, all armed with stones and accused Augusto Gallanosa, Jr. armed with a bladed weapon, conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully and feloniously attack, assault and stab one Dante L.

Frencillo, hitting and inflicting upon the latter mortal wounds which directly caused his death, to the damage and prejudice of his legal heirs.

CONTRARY TO LAW.”^[3]

Upon being arraigned, appellant assisted by his counsel, pleaded not guilty to the charges against him.^[4]

Thereafter, trial on the merits ensued.

The evidence for the prosecution showed that, at about 3:00 p.m. on 6 November 2002 the victim, Dante Frencillo (Dante), together with his wife, Maricel Frencillo were on their way to a wedding when they passed by the house of appellant in Banogao, Matnog, Sorsogon. All of a sudden, Dante was stoned by the relatives of appellant namely; Luzviminda alias Minda, Augusto Sr., alias Onto, Nonito alias Larot and Gina, all surnamed Gallanosa. After Dante was hit by the stones thrown to him, appellant appeared and stabbed Dante on the latter's left abdomen. Immediately, Dante fell on the ground and died on the spot.^[5]

Thereafter, the second victim, Nonilon Frencillo (Nonilon) appeared to assist his brother, Dante, but was likewise stoned by Augusto Sr. As a result, Nonilon ran but was chased by appellant who caught up with the former who slipped. Nonilon, in a kneeling position then raised his hands and uttered “I will not fight you”. Nonetheless, his hands were hacked by appellant which was followed with a stab on Nonilon's chest. Not yet done, appellant encircled Nonilon several times, each time stabbing the latter on his front.^[6]

The defense recounted a different version of the facts.

On same date, Dante went to the house of Medel Gallanosa challenging the latter to come out of his house. At that time, however, Medel Gallanosa was not around and as such, Dante started throwing rocks at the house of the former. Medel Gallanosa's common-law-wife, Annie Grace Ramirez, out of fear, went outside of their house and ran towards the house of Augusto Gallanosa, Sr., Medel Gallanosa's uncle. After Augusto Gallanosa, Sr., opened the door of his house to let Annie Grace Ramirez in, Dante suddenly rushed towards Augusto Gallanosa, Sr..^[7] Dante then tried to stab Augusto Gallanosa, Sr., but was unsuccessful. At that point, appellant appeared and was met by a lunging knife attack from Dante. Appellant, however, evaded the attack of Dante and was able to stab the latter with his own knife.^[8]

Thereafter, the siblings of Dante namely; Bigo and Nonilon appeared, the first one holding a bamboo stick. Nonilon then punched appellant who scampered away. At that instance, Nonilon Frencillo started throwing rocks at the fleeing appellant. Nonilon then ran after appellant and along the way the former was also able to pick up a piece of wood. When Nonilon caught up with appellant, the former tried to strike the latter with the piece of wood.^[9] However, appellant was able to stab Nonilon first using his knife.^[10] Subsequently, appellant surrendered to a barangay tanod, Emilio Castedades, who brought appellant to the barangay captain of Pawa where appellant was whisked away by the police.^[11]

Finding then the pieces of evidence of the prosecution worthy of credence and weight as against the plea of self-defense invoked by appellant, the trial court, as alluded to earlier, convicted appellant for two (2) counts of murder and at the same time, acquitted fellow accused Luzviminda Gallanosa for lack of evidence. The fallo of the said decision reads:

"WHEREFORE, the prosecution having established the guilt of the accused Augusto Gallanosa, Jr. beyond reasonable doubt in Crim. Case No. 1631 for the Murder of Nonilon Frencillo is hereby sentenced to suffer the penalty of Reclusion Perpetua. To pay the heirs of the victim(,) loss of earning capacity in the amount of P5,878,800.00, P51,000.00 as supported by receipts as actual compensatory damages, P75,000.00 as civil indemnity, P75,000.00 as moral damages, P25,000.00 as exemplary damages and to pay the costs.

Likewise the accused Augusto Gallanosa, Jr. in Crim. Case no. 1632, is hereby sentenced to suffer the penalty of *reclusion perpetua*. To pay the heirs of Dante Frencillo the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages, P25,000.00 as exemplary damages and to pay the costs.

The period of detention of Augusto Gallanosa, Jr. is credited in his favor in accordance with Article 29 of the Revised Penal Code.

In Crim. Case No. 1632, Luzviminda Gallanosa is hereby ACQUITTED and the case against her is ordered DISMISSED.

Issue a Warrant of Arrest for the other remaining accused who are still at large, namely Augusto Gallanosa, Sr. in Crim. Case No. 1631 and the other accused in Crim Case No. 1632, namely: Augusto Gallanosa, Sr. @ Onto; Nonito Gallanosa @ Larot and Gina Gallanosa.

Considering that the accused Luzviminda Gallanosa is a detention prisoner, she is hereby ordered released from legal custody. The Provincial Warded of Sorsogon Provincial Jail is hereby ordered to release the person of the accused unless there is a case for which she may be further detained.

SO ORDERED."^[12]

With the denial of his motion for reconsideration of the above decision,^[13] appellant now comes to this Court for relief and in support thereof assigns this lone error for consideration, viz.:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF MURDER AND IN IMPOSING CIVIL LIABILITIES, DESPITE PROOF OF LEGITIMATE EXERCISE OF SELF-DEFENSE.

In essence, appellant argues that he was justified in the killing of Dante and Nonilon as they both tried to kill him first. According to appellant, the testimonies of the prosecution witnesses, namely: Lolita Frencillo Espinar and Medina Frencillo narrating how Dante was ambushed by appellant and appellant's relatives do not

deserve credence as they contain inconsistencies and contrary to the medical certificates of the victims. On this score, appellant insists that there is no treachery involved as it was Dante who instigated the incident. Also, appellant claims that his voluntary surrender to the authorities should have been appreciated by the trial court in reducing his penalty. Lastly, appellant asserts that since no crime was committed, no civil liability should have been imposed upon him. At the very least, appellant points that even if he is civilly liable, the award given should have been supported by adequate documentary proof.

After sifting through the facts of case, as guided by the applicable laws and jurisprudence, this Court finds the instant appeal partially meritorious.

At the outset, a review of Article 248 of the Revised Penal Code, the law on murder, is in order, thus:

"ART. 248. Murder. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

xxxx."

The elements of murder that the prosecution must establish are (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) that the killing is not parricide or infanticide.^[14]

Without question the first element is present as both victims were shown to have been killed by stab wounds. The medico-legal certificate of Dante reveals that he received a stab wound in his chest and that the probable cause of his death was "Hypovolemic Shock from Cardiac Tamponade secondary to Stab Wound on Left Chest Wall".^[15] The medico-legal certificate of Nonilon Frencillo, on the other hand, manifests that he received four (4) stab wounds in his chest and one (1) hacking wound on his left forearm and that the probable cause of his death was "Hypovolemic shock from Massive Hemorrhage secondary to Multiple Stab Wounds".^[16]

The second element likewise is not in dispute considering that appellant invokes self-defense in the case at bar. It is a settled rule that when an accused claims the justifying circumstance of self-defense, the accused admits the commission of the act of killing.^[17]

According then to Article 11 of the Revised Penal Code, "any person who acts in defense of his person or rights" do not incur any criminal liability provided that the following requisites concur: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself. Conversely, the appellant must be able to establish that all three circumstances concur in order for the appellant's act to be

justified under the law.^[18]

It is then incumbent upon the appellant to rely on the strength of his own evidence and not on the weakness of the evidence of the prosecution, for even if the latter was weak, it could not be disbelieved after he had admitted the killing.^[19]

However, it is clear from the records of the case that appellant, right off the bat, failed to prove that there was unlawful aggression on the part of the victims to justify his acquittal. Worthy to note that unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person.^[20] Consequently, unlawful aggression is a condition *sine qua non* for self-defense to be appreciated. Without unlawful aggression, the appellant has nothing to prevent or repel, and there is then no basis for appreciating the other two requisites.^[21]

As between the testimonies of the prosecution witnesses that Dante suffered an ambushade and the testimonies of the defense witnesses that Dante attacked first, the former should be given more credit. Notably, the testimonies of the defense witnesses including that of appellant's are full of glaring improbabilities and gaping loopholes that create a serious cloud of doubt as to the merit of the defense's position.

First, we find it highly unbelievable the testimony of appellant that Dante Frencillo at the time of his death was carrying a knife used in butchering a pig for a wedding celebration.^[22] It is well to point that the wedding celebration occurred at 11:00 a.m.^[23] and the pig has already been butchered before that time.^[24] Certainly, there was no more need for Dante Frencillo to be carrying a knife at 3:00 p.m. when the incident occurred.

Second, appellant claimed that the knife used by Dante Frencillo was recovered by a certain Junior Garduque.^[25] However, said bare claim is betrayed by the failure of appellant to subpoena said Junior Garduque to testify on this case despite knowledge of the latter's address.

Third, appellant attested that when he first heard someone yelling for help, he thought that his mother fell unconscious as the latter already suffered a stroke before.^[26] However, we find it highly illogical that appellant would rush outside of his house carrying with him a bolo knife if his first instinct was to assist his mother considering that the bolo knife would further impede his mobility.

Fourth, defense witness, Annie Grace Ramirez, testified that Nonilon, before he got stabbed by appellant, tried to hit the latter with a piece of wood which he picked up while going after appellant, thus:

"Atty Loilo:

xxxx.

q -At the time Noni Frencillo stoned Aday Gallanosa, what happened next?

a- When Noni Frencillo passed by the side of the school, he also picked up a piece of wood.

q -When this event was happening Madam witness, where were you?