

SPECIAL TWENTIETH DIVISION

[CA-G.R. CEB-CR. NO. 01949, July 04, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DIOSDADO PATAYAN, JR. @ "TATA", ACCUSED-APPELLANT.**

DECISION

HERNANDO, J:

Before Us is an Appeal from the Decision^[1] dated April 18, 2012 rendered by the Regional Trial Court (RTC), Branch 49 of Tagbilaran City, finding accused-appellant Diosdado "Tata" Patayan, Jr. guilty beyond reasonable doubt of the crime of Frustrated Homicide. The dispositive portion of the assailed Decision reads:

WHEREFORE, finding accused Diosdado Patayan, Jr., a.k.a. Tata, guilty beyond reasonable doubt for the crime of frustrated homicide only, and applying the Indeterminate Sentence Law, he is hereby sentenced to suffer a penalty of imprisonment for a period ranging from four (4) years and one (1) day of *prision correccional* as minimum to eight (8) years of *prision mayor* as maximum. In addition, accused is hereby ordered to indemnify the private complainant Godofredo Ladesma the following civil liabilities, to wit:

- a.) Five Thousand Nine Hundred Twenty-eight Pesos and 65/100 (P5,928.65), by way of actual damages;
- b.) Thirty Thousand Pesos (P30,000.00), by way of moral damages;
- c.) Thirty Thousand Pesos (P30,000.00), by way of exemplary damages;
- d.) Twenty Thousand Pesos (P20,000.00), by way of attorney's fees; and
- e.) To pay the costs of suit;

but without subsidiary imprisonment in case of insolvency.

SO ORDERED."^[2]

The Antecedents:

On December 6, 2004, an Information^[3] for Frustrated Homicide was filed against accused Diosdado "Tata" Patayan, Jr. before the Regional Trial Court, Branch 49 of Tagbilaran City, the accusatory portion of which reads as follows:

That on or about the 20th day of September, 2004, in the City of Tagbilaran, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill and without any justifiable cause, did then and there willfully, unlawfully and feloniously, with the use of a *samurai* sword, attack and hack one Godofredo S. Ladesma, said attack was committed at the dwelling place of said Godofredo S. Ladesma, thereby inflicting upon him injuries: Multiple Hacking wounds: 1.5 cm. Left Frontal; 5 cm. Left Antero-Lateral Chest 10th Rib Left, were it not of the immediate and effective medical attendance given to him would have directly cause the death of said Godofredo S. Ladesma, thus the accused had in said manner performed all the acts of execution which would have produced the crime of homicide as a consequence but which nevertheless, did not produce it by reason of cause or causes independent of the will of the accused, that is, the immediate and effective medical attendance rendered to the victim, to the damage and prejudice of said Godofredo S. Ladesma in the amount to be proved during the trial of the case.

Acts committed contrary to the provisions of Article 249 in relation to Article 6 of the Revised Penal Code and committed with the aggravating circumstance of dwelling.

When arraigned on May 30, 2005, accused, with the assistance of his counsel, Atty. Mia Manuelita C. Mascariñas-Green, entered a plea of not guilty^[4] to the crime charged.

After the pre-trial was terminated^[5], trial on the merits ensued.

Version of the Prosecution^[6]

On September 20, 2004, at about 6:30 in the evening, private complainant Godofredo S. Ladesma, together with his stepchild Norlyn R. Lasco and children Rhea Marjorie Ladesma and Michaela Ladesma, was at the *sala* of their house located at Rizal St., Tamblot, Tagbilaran City, watching a television show, when suddenly accused Diosdado "Tata" Patayan, Jr., barged inside and repeatedly hacked Godofredo S. Ladesma in the forehead and chest with the use of a "*samurai*" rendering Godofredo unconscious. His children, seeing their father lying in a pool of blood, shouted for help while accused hurriedly left the house.

The shouts for help caught the attention of a neighbor, Marietta Deguma, who immediately went to Godofredo's house. On her way, she saw accused Diosdado "Tata" Patayan, Jr. emerging from the house with a bloodied *samurai* and running towards the back portion of the house.

Godofredo was brought to the Gov. Celestino Gallares Memorial Hospital where he was treated and attended to by Dr. Rolando Po who explained that Godofredo sustained a hacking wound about 5 cm. long at the left forehead and another 5 cm. wound at the left breast. Dr. Po opined that probably, the wounds might have been caused by a sharp edged instrument and further stated that without medical attendance, the injuries could have caused the death of the victim as they were open wounds and prone to infection.

Police investigators retrieved a *bolo* from the house of Godofredo and brought the same to the Police Station. Accused, however, was able to elude arrest.

At about 11 in the evening of September 19, 2004, or a day prior to the hacking incident, Godofredo's house was rained with stones allegedly thrown by Pablo Amoncio, Jonathan Mandin, and accused Diosdado Patayan, Jr., who even shouted to Godofredo, "*Gawas diha kay amo kang sabwon*" (Get out there as we'll turn you into a soup). As a result, a complaint for malicious mischief and threats was filed on September 24, 2004 by Jocelyn Lasco, Godofredo's live-in partner, against Pablo Amoncio and Jonathan Mandin, excluding accused, as the latter was already facing the charges from which the instant case arose.

As a result of the hospitalization, Godofredo Ladesma incurred medical and hospital expenses in the amount of Php20,000.00 more or less but only the amount of Php3,477.50 had receipts. Godofredo declared that as a result of the incident, he was not able to report to his work as a bet taker in the cockpit for one (1) month and had a loss of earning in the amount of Php10,000.00 at an average of Php2,500.00 per week. He further alleged that he feared for his life up to the time of his testimony and suffered nightmares. Hence, he asked for the amount of Php100,000.00 by way of moral damages and another Php500,000.00 as exemplary damages.

Version of the Defense^[7]

At around 4:00 o'clock in the afternoon of September 19, 2004, accused Diosdado "Tata" Patayan, Jr. was at the basketball court near his house. Jaosue Celerijia warned accused to be careful as he had seen private complainant Godofredo S. Ladesma roaming around the neighborhood with a *bolo* in his hand, looking for someone. Ladesma's house was stoned the night before. According to accused, he was not bothered by the warning since he did not have any altercation or misunderstanding with private complainant.

The following day, on September 20, 2004, at around 6:30 in the evening, accused was at his residence in Tamblot Street, Tagbilaran City, when his two friends namely, Rein Michael C. Real and Emar Jhon P. Bangalao, arrived. The three agreed earlier to visit a certain Miszel, whom accused was courting. Accused then told his friends to wait for him while he went to buy shampoo so he could take a bath. Real and Bangalao, however, insisted that they accompany accused to the store.

At about five steps away from accused's house, private respondent Godofredo S. Ladesma suddenly sprung from the dark side of the alley and struck accused with a *bolo*. Accused was caught by surprise with the suddenness of the attack and was unable to run. He was hit at his left shoulder but the *bolo* was not able to penetrate because of the t-shirt that accused draped on his left shoulder. His two friends got scared and scampered away in different directions. The two did not know anymore what happened thereafter.

According to accused, after the first attack, private complainant again struck him with the *bolo* where he was hit and wounded on his upper breast portion. Thereafter, he was able to run towards his house and went inside but private complainant chased him and continued to strike him with the *bolo* he was holding. Accused then

saw a *samurai* that was displayed in their *sala*, got hold of it and used the same to parry the blows of the private complainant who kept on striking him. He was not hit as private complainant was allegedly a little bit drunk at that time.

Accused successfully drove Ladesma out of his house but the latter allegedly kept on striking him even when they were already on the alley until they were near the house of private complainant where the latter stabbed him again, hitting accused's chest. It was at this juncture that accused retaliated by striking private complainant with the use of his *samurai* as the latter seemed determined to kill him (accused). He again struck private complainant for the second time resulting to the latter's injury at his left forehead and left chest.

Accused, thus, admitted to be the one who inflicted the injuries sustained by private complainant but asserted that he did so in self-defense.

Accused was also treated by Dr. Rolando R. Po. Per the latter's findings, accused sustained a superficial laceration of about .6 cm at the upper right chest and a punctured wound at the left upper portion of his chest. According to Dr. Po, these are minor wounds which could have been caused by a sharp pointed instrument.

Ruling of the Trial Court^[8]

The trial court did not appreciate the claim of self-defense by accused. It held that the essential and primary element of unlawful aggression was lacking in the case as the same had ceased at the time that accused inflicted the injuries on private complainant. In so ruling, the trial court explained, thus:

Thus, the only plausible scenario that really transpired at that time is that initially the private complainant was the aggressor by hacking twice with a *bolo* the accused. But the attack had ceased and stopped at the very moment the accused ran towards his house. Certainly, it is foolhardy for the private complainant to continue with the attack knowing that accused is already in his own backyard.

Moreover, this explains why in the testimony of Norlyn Lasco, her step-father was already viewing the TV show at the time but was seated at the window peeping outside.

Consequently, since the unlawful aggression had already ceased, herein accused is not anymore justified to retaliate and inflict multiple injuries to the private complainant. In this vein, the case of *People vs. Rabanal, 349 SCRA 198*, is enlightening wherein the Supreme Court held:

It is a doctrinal rule that when an unlawful aggression which has begun no longer exists, the one making a defense has no right to kill **or even wound the former aggressor.**
(underscoring supplied)

Evidently, since the perils to the life of the accused was not anymore imminent nor actual, his act of retaliation by hacking the private complainant who was already inside his dwelling had turned and converted him (accused) into that of an unlawful aggressor.

The essential element of unlawful aggression not being present, the plea of self-defense interposed by the accused cannot therefore be appreciated.

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Hence, this appeal^[9] by accused-appellant Diosdado Patayan, Jr. *alias* "Tata" on the ground that the court *a quo* gravely erred when it ruled that:

The Assigned Errors^[10]:

A. THE UNLAWFUL AGGRESSION INITIATED BY THE PRIVATE COMPLAINANT HAD ALREADY CEASED AT THE TIME ACCUSED INFLICTED INJURIES ON THE PRIVATE COMPLAINANT; THUS, THE PLEA OF SELF-DEFENSE CANNOT BE APPRECIATED IN HIS FAVOR;

B. THE CAPTION OF THE INFORMATION IS FOR FRUSTRATED MURDER EVEN IF THE INFORMATION IS CAPTIONED AS ONE FOR FRUSTRATED HOMICIDE.

The Court's Ruling:

The appeal is bereft of merit.

At the outset, this Court duly notes that the present case is one for Frustrated Homicide. Appellant was charged^[11] with and arraigned for that crime.

Appellant insists that the essential elements of self-defense are present in this case. He argues that the trial court gravely erred when it ruled that the unlawful aggression ceased to exist when private complainant sustained injuries arising from his retaliation. According to him, there was no proof presented evincing a material gap from the infliction of the actual, material and unlawful aggression on his person by private complainant up to the time when he retaliated against said aggression. There was no gap from the time private complainant sprung out from the dark alley and attacked him with a *bolo* up to the time that he was chased by private complainant inside his house until he got hold of the *samurai* and inflicted injuries on the former. Appellant asserts that the attacks of private complainant was relentless. Hence, he was justified in inflicting injuries on private complainant.

Appellant's arguments fail to persuade Us.

A careful and judicious examination and evaluation of the records of the case reveals that the trial court did not commit grave or serious error when it disregarded appellant's claim of self-defense.

It is settled 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.^[12] Self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence or when it is extremely doubtful by itself.^[13] Indeed, in invoking self-defense,^[13] the burden of