

## **SPECIAL TWENTIETH DIVISION**

**[ CA-G.R. CEB CR NO. 00844, July 01, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FIDEL  
LAPINGCAO, ACCUSED-APPELLANT.**

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

**QUIJANO-PADILLA, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated October 1, 2007, of the Regional Trial Court, 8<sup>th</sup> Judicial Region, Branch 14, Baybay, Leyte, finding accused-appellant Fidel Lapingcao, guilty beyond reasonable doubt of Frustrated Homicide in Criminal Case No. B-03-09-108.

#### **The Facts**

On September 7, 2003, accused-appellant Fidel Lapingcao was charged in an Information<sup>[2]</sup> for Frustrated Homicide, the accusatory portion thereof, reads:

"That on or about the 29<sup>th</sup> day of June 2003, at about 7:00 in the evening at Zone 1, Municipality of Baybay, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and stab Carlos Parba, Jr., with a knife which the accused had provided himself for the purpose thereby causing and inflicting upon the victim stab wound 4 cm. in length epigastric area, accused thus 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 the timely medical attendance rendered on the victim, Carlos Parba, (Jr.), to his damage and prejudice.

CONTRARY TO LAW."

Accused-appellant was released when he posted bail on July 24, 2003.<sup>[3]</sup>

During his arraignment<sup>[4]</sup> on October 30, 2003, with the assistance of his counsel, he pleaded not guilty to the offense charged.

During pre-trial, the parties stipulated on the identity of accused-appellant Fidel Lapingcao as well as the identity of the complainant Carlos Pabra, Jr., the time, place and date of the commission of the offense.<sup>[5]</sup>

Thereafter, trial on the merits ensued.

#### VERSION OF THE PROSECUTION

Prosecution presented the victim and his wife Magdalena Pabra.

The victim Carlos Pabra, Jr., [Carlos] worked for Jose Ong Construction [JO] as a painter. Sometime in June 2003, he was assigned to work at Baybay, Leyte for the construction of the Mormon Latter Day Saint's Church. During his temporary stay thereat, he was accompanied by his wife.<sup>[6]</sup> On June 28, 2003, he was informed by their timekeeper that he was already laid off from work. So the next day on June 29, 2003 at around 7:00 o'clock in the evening, Carlos pleaded with Fidel Lapingcao [Fidel] being the head painter, to give him one more week to work, explaining that his previous week's wage was already spent for their consumption so that he does not have enough money to pay for their fare.<sup>[7]</sup> Fidel ignored him and instead went to the canteen, Carlos joined by his wife followed the former.<sup>[8]</sup>

In the canteen, Carlos earnestly begged Fidel, when suddenly the latter grabbed a knife and stabbed Carlos on the right side of his abdomen.<sup>[9]</sup> Shocked, Carlos covered his wounds with his hands and was able to walk three steps away from Fidel until he lost consciousness.<sup>[10]</sup> He was rushed to the Western Leyte Provincial Hospital in Baybay but because of the gravity of his wounds, he had to be brought to Tacloban City the next day<sup>[11]</sup> where surgery was performed on him and was confined for one <sup>[1]</sup> week.<sup>[12]</sup> He spent P2,500.00 only because JO Construction paid for all his hospitalization expenses. His wound made him unfit and incapacitated to work for eleven <sup>[11]</sup> months, leaving him with no income during the interim.<sup>[13]</sup>

The parties agreed to dispense with the testimony of the attending physician Dr. Christopher John S. Ramos of the Eastern Visayas Regional Medical Center because he is no longer connected at the said hospital.<sup>[14]</sup> Prosecution offered for admission the Medical Certificate issued by the attending physician which was admitted by the defense.<sup>[15]</sup>

After the prosecution has rested, it offered Exhibits "A" to "D"<sup>[16]</sup> with all their sub-markings which were duly admitted<sup>[17]</sup> by the court *a quo*.

#### VERSION OF THE DEFENSE

The defense presented three <sup>[3]</sup> witnesses: accused-appellant himself, his wife Gloria Lapingcao and Guillermo Bengalan, who established the following facts:

Accused-appellant Fidel Lapingcao is employed at JO Construction as a head painter. Sometime in June 2003 he together with his fellow painters were shipped to Baybay, Leyte to work on the construction of the Mormon Church there along with Engineer Benjamin Fazon. Carlos was under the supervision of Fidel.<sup>[18]</sup>

Fidel noticed that Carlos had been sleeping at their bunkhouse during work hours, in fact he had caught him thrice doing the same thing. So Fidel intimated the matter to

Engineer Benjamin Fazon and told the latter to dismiss Carlos due to his inefficiency at work. The engineer agreed with him and on June 28, 2003 Carlos received his last pay from the company. He was likewise given money to cover for his fare going home.<sup>[19]</sup>

On June 29, 2003, Fidel together with his wife Gloria Lapingcao and Guillermo Bengalan arrived at JO Construction's bunkhouse from visiting Fidel's relatives at Patag, Leyte. When Fidel went up to his designated room he was surprised to see Carlos and his wife still on the premises after the latter's dismissal.

Magdalena Parba, Carlos' wife approached Fidel and angrily asked him why he laid off her husband. In order to avoid trouble, Fidel decided to go to the canteen and watched television there. Little did he know that Carlos and Magdalena Parba followed him to the canteen, while there Carlos' wife started cursing him and Carlos uttered "I will kill you".<sup>[20]</sup> With the threat, Carlos brought out his sharpened spatula and thrust it to Fidel twice and the latter was able to avoid it by retreating backwards away from the blows of Carlos. Carlos continued to thrust at Fidel who later retreated to the wall of the kitchen and had nowhere else to go. Cornered, he immediately grabbed the knife lying on top of the table and brandished it at Carlos warning him "Do not get near me and if you get near me I will stab you." When Carlos continued stabbing Fidel and the latter could no longer evade the thrusts of Carlos, he stabbed the latter. After Fidel saw the blood oozing from the abdominal wound of Carlos, he left him for fear of the sight of blood.<sup>[21]</sup> The narration of Fidel was corroborated by his witnesses.

Thereafter, defense formally offered Exhibts "2 and 3"<sup>[22]</sup> with all their sub-markings, all duly admitted<sup>[23]</sup> by the court *a quo* over the objection<sup>[24]</sup> of the prosecution.

After weighing the evidence rendered by both parties, the court *a quo* found accused-appellant guilty beyond reasonable doubt of the offense charged. The dispositive portion of its Decision, reads:

"WHEREFORE, judgment is hereby rendered finding the accused, Fidel Lapingcao, GUILTY beyond reasonable doubt for having committed the crime of Frustrated Homicide. Sentence is hereby rendered for said accused to suffer an indeterminate penalty of FOUR (4) YEARS of prision correccional as minimum to EIGHT (8) YEARS of prision mayor as maximum and to indemnify the victim the sum of Forty Eight Thousand Pesos (Php 48,000.00) representing lost income.

No pronouncement as to costs."<sup>[25]</sup>

On appeal, accused-appellant raised the lone assignment of error, thus:

"THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT."<sup>[26]</sup>

### ***Our Ruling***

Accused-appellant disagrees with the ruling of the court *a quo* finding that the

course of action taken by him was unreasonable thereby negating the presence of unlawful aggression which is one of the elements of the justifying circumstance of self defense. While accused-appellant may have used a bladed weapon in order to repel the attack on him the same should not immediately be ruled out as an unreasonable course of action. In the imminent need, accused-appellant should not reasonably be expected to have the luxury of time to choose the weapon that is similar and less lethal than what the victim used in attacking him.<sup>[27]</sup>

Citing the case of *People v. Artuz* (71 SCRA 116), the Supreme Court had already declared that the gauge of rational necessity is to be found in the situation as it appears to the individual who is the object to the aggression. The instinct of self-preservation more often than not is the moving power in man's action in defending himself.

The appeal is impressed with merit.

By pleading self-defense, an accused admits the killing or injuring of the victim, and thereby assumes the burden to establish his plea of self-defense by credible, clear and convincing evidence; otherwise, his conviction will follow from his admission of killing or inflicting injury to the victim. Self-defense cannot be justifiably appreciated when it is uncorroborated by independent and competent evidence or when it is extremely doubtful by itself. Indeed, the accused must discharge the burden of proof by relying on the strength of his own evidence, not on the weakness of the State's evidence, because the existence of self-defense is a separate issue from the existence of the crime, and establishing self-defense does not require or involve the negation of any of the elements of the offense itself.<sup>[28]</sup>

As an element of self-defense, unlawful aggression refers to an assault or attack, or a threat thereof in an imminent and immediate manner, which places the defendant's life in actual peril. It is an act positively strong showing the wrongful intent of the aggressor and not merely a threatening or intimidating attitude. It is also described as a sudden and unprovoked attack of immediate and imminent kind to the life, safety or rights of the person attacked.<sup>[29]</sup>

There is an unlawful aggression on the part of the victim when he puts in actual or imminent peril the life, limb, or right of the person invoking self-defense. There must be actual physical force or actual use of weapon. In order to constitute unlawful aggression, the person attacked must be confronted by a real threat on his life and limb; and the peril sought to be avoided is imminent and actual, not merely imaginary.

Thus, to escape liability, the accused must show by sufficient, satisfactory and convincing evidence that: (a) the victim committed unlawful aggression amounting to an actual or imminent threat to the life and limb of the accused claiming self-defense; (b) there was reasonable necessity in the means employed to prevent or repel the unlawful aggression; and (c) there was lack of sufficient provocation on the part of the accused claiming self-defense or at least any provocation executed by the accused claiming self-defense was not the proximate and immediate cause of the victim's aggression.<sup>[30]</sup>

In the instant case, accused-appellant is clear, consistent and unwavering in his

testimony that the victim is the unlawful aggressor and that he merely did what he could at the moment in order to defend his person, thus:

“Q: Mr. Witness, can you still recall where were you on June 28, 2003?

A: Yes.

Q: Where were you?

A: We were at Brgy. Patag.

Q: Who was with you in going to Brgy. Patag?

A: My wife and Guillermo Bengalan.

Q: What date did you come back to Baybay?

A: June 29.

Q: What time is that?

A: 8:30 in the evening.

Q: And when you arrived from Brgy. Patag, were there any unusual incident that happened?

A: When we arrived nothing happened yet. So, when we arrived, we went up to the bunkhouse and<sup>[31]</sup> when I went up, I saw Carlos Parba and Lina Parba, his wife and I was surprised why they were still there and had not gone home.

Q: Why do you know that Mr. Carlos Parba was already given money for his fare home?

A: Yes, our time keeper had already given him.

Q: After you saw Mr. Carlos Parba and his wife, what happened?

A: The wife of Carlos Parba has been chatting that why I laid off her husband. So to avoid trouble, we went down together with my wife and Guillermo Bengalan to the canteen.

Q: And did you in fact arrive at the canteen?

A: Yes, we were at the canteen and we watched TV.

Q: And while you were at the canteen, what happened?

A: While we were at the canteen, Carlos and Lina Parba followed us and when we arrived at the canteen, Lina Parba has been saying bad words and Carlos Parba shouted, “I will kill you”.

Q: After Carlos Parba shouted, “I will kill you”, what did you do?

A: When Carlos Parba shouted, “I will kill you”, he suddenly attacked me holding his spatula and he tried to stab me but I was able to evade it. The second<sup>[32]</sup> time he made a stab thrust, I was then able to evade it but at the third time, I was cornered by the wall of the canteen and that was the time I saw a knife on the table which was used in cutting vegetables, so I took the knife.

Q: After you took the knife, what did you do?

A: After I took the knife, I told Carlos Parba “Do not get near me and if you will get near me, I will stab you.”

Q: And after you uttered those words, what happened?

A: After I uttered those words, he is (sic) still attacked me and tried to stab me and so, what I did was made a stab thrust because I could not evade anymore because I was cornered by the wall of the canteen. So, in order to depend (sic) myself, I stabbed him.

Q: How many times were you able to hit Carlos Parba?

A: Only once.

Q: After you hit Mr. Carlos Parba, what did you do?

A: When I saw the blood oozing from his wound, I left because I