

THIRTEENTH DIVISION

[CA-G.R. CR.-H.C. No. 05060, October 10, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VICENTE FERNANDO, JR. ACCUSED-APPELLANT.**

DECISION

SADANG, J.:

This is an appeal from the Joint Decision^[1] dated May 5, 2011 of the Regional Trial Court (RTC) of Guimba, Nueva Ecija, Branch 33 in Criminal Case Nos. 1997-G and 1998-G, finding accused-appellant Vicente Fernando, Jr. guilty beyond reasonable doubt on separate charges of murder and attempted murder.

The antecedent facts

Accused Vicente Fernando, Jr. (hereafter, accused) was charged with murder and attempted murder in separate Amended Informations that read:

a. Crim. Case No. 1997-G (Murder)

That on or about the 15th day of July 2002, in Brgy. Manacsac, in the Municipality of Guimba, Province of Nueva Ecija, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and while armed with an unlicensed short firearm (Caliber .45 pistol), and acting with treachery and evident premeditation, did then and there wilfully (sic), unlawfully and feloniously attack, assault and shoot one DENNIS GERONIMO, inflicting upon the latter gunshot wounds in his body which resulted to his death, to the damage and prejudice of the heirs of said victim.

DONE CONTRARY TO LAW.^[2] (Underscoring in the original)

b. Crim. Case No. 1998-G (Attempted Murder)

That on or about the 15th day of July 2002, in Brgy. Manacsac, in the Municipality of Guimba, Province of Nueva Ecija, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and while armed with an unlicensed short firearm (Caliber .45) pistol, and acting with treachery and evident premeditation, did then and there wilfully (sic), unlawfully and feloniously attack, assault and shoot one ZENAIDA GERONIMO, inflicting upon the latter gunshot wounds in her body, commencing the commission of Murder directly by such overt acts, but did not perform all the acts of execution which should produce murder by reason of causes or accident

other than his own spontaneous desistance, to the damage and prejudice of said Zenaida Geronimo.

DONE CONTRARY TO LAW.^[3] (Underscoring in the original)

At the arraignment, accused entered a not guilty plea to both charges.^[4] However, at the pre-trial, he admitted having shot Dennis Geronimo and Zenaida Geronimo but claimed self-defense; hence, reverse trial ensued.

The defense presented the accused, Felix Valdez, Rodolfo Sanoy and Alexander Barawid from whose testimonies the following may be gathered:

In the 2002 barangay elections, accused ran against Eduardo Castillo for the position of Punong Barangay of Barangay Manacsac, Guimba, Nueva Ecija. Dennis Geronimo, the deceased victim, was a former counselor and supporter of Castillo. At around 3 PM of July 7, 2002, Felix Valdez was at a waiting shed when he saw a red pickup truck stop at the house of accused. Dennis was driving the truck and shouted at the accused saying, *"Putang ina mo Jojo talo ka na,"* after which he sped off. In the morning of election day on July 15, 2002, Rodolfo Sanoy saw Dennis near the gate of Manacsac Elementary School wearing a t-shirt with these words printed on the back, *"Hindi ka pa kapitan mayabang ka na. Paano kami kung manalo ka. Bang bang bang."* At 10 PM on the same day, accused, together with Vic Ramos and "Boy Bangis" Manungon went to the Manacsac Elementary School, Guimba, Nueva Ecija to inquire about the results of the barangay and SK elections. They proceeded to the office of the principal, Mrs. Barawid, and accused found out that he lost in the election. While accused was talking to Mrs. Barawid, Dennis and Zenaida arrived. On seeing accused, Dennis shouted saying, *"Ba't nandito yan? Putang Inamo Jojo, umalis ka na dito, 'wag mo nang pakialaman ang resulta ng election, talo ka na,"* to which accused replied, *"Huwag ka naman ganyan."* Thereupon, accused and Dennis pushed each other. To avoid any untoward incident, accused turned his back on Dennis but accused's companion shouted: *"Pare, babarilin ka."* To defend himself, accused grabbed the gun of Manungon and shot Dennis. A stray bullet hit Zenaida on the left thigh. Accused recalled past instances wherein Dennis made insulting comments, such as, *"Jojo, huwag ka nang tumakbo di ka mananalo, sayang lang ang pagtakbo mo."* He admitted on cross examination that he did not see if Dennis had a gun.

The prosecution offered the testimonies of Zenaida, Dexter Geronimo and Dr. Jun D. Concepcion.

Zenaida testified that she was a public school teacher at the Manacsac Elementary School and a member of the Board of Election Inspectors. At 6 AM on July 15, 2002, she went to the school to supervise the barangay elections to be held on that day. At about 10 PM, while she was tallying the election results in the precinct, she heard the sound of a gunshot and saw accused holding a long firearm. Her son, Dennis, arrived in the precinct to fetch her but as they were about to leave accused entered the room and blocked their way. Accused then shot her twice, hitting her left thigh and buttocks. Accused then shot Dennis' leg. As Dennis fell down, accused shot him twice on the head.

Dexter Geronimo testified on the funeral expenses incurred by the family. He stated

that he paid the Abad Cemetery P45,000.00 and the St. John Funeral Homes P37,000.00. He also showed a list of expenses incurred during his brother's wake amounting to P301,678.00.

Dr. Jun D. Concepcion, Medico-Legal Officer of the Province of Nueva Ecija, testified that he conducted a post-mortem examination of the body of Dennis upon the request of Police Superintendent Antonio Feliciano of Guimba, Nueva Ecija Police Station. He testified that Dennis sustained three (3) gunshot wounds and one crushing wound on the tip of his middle finger. The point of entry of the first gunshot wound was the mastoid area or back portion of the victim's head near his ears and the exit wound is at the zygomatic area, the trajectory of the bullet being upward. The point of entry of the second gunshot wound was at the tempora occipital area or the back portion of the head and the exit wound was on the right ear with some brain substance coming out from its original location. The third gunshot wound is on the proximal third of the left leg with point of exit at the distal third point. The last wound sustained by the victim is a crushing wound found on the tip of the middle finger caused by a rough object. Dr. Concepcion confirmed that the first and second gunshot wounds inflicted on the victim were fatal. Based on the trajectory of the first and second gunshot wounds, he opined that the assailant fired the gun while standing at the back of the victim and while the latter was in a lying position.

The prosecution offered documentary evidence,^[5] viz.: 1) Death Certificate of Dennis Geronimo; 2) St. John Funeral Home Official Receipt No. 1461, dated July 21, 2002; 3) Itemized list of expenses for food during the wake and 40th day of Dennis Geronimo's death amounting to P301,678.00; 4) Receipt in the amount of P45,000.00; and 5) Autopsy Report issued by Dr. Concepcion.

On May 5, 2011, the RTC rendered its Joint Decision^[6] convicting accused on both charges. The *fallo* reads:

WHEREFORE, finding the accused GUILTY beyond reasonable doubt, in both charges, this Court hereby sentences him in:

A. Criminal Case No. 1997-G, to *reclusion perpetua* and to pay the heirs of Dennis Geronimo the following:

1. P50,000.00 – for the death of Dennis Geronimo
2. P82,000.00 – in actual damages
3. P75,000.00 – in moral damages

B. Criminal Case No. 1998-G, to an indeterminate penalty of four (4) years and two (2) months of prision correctional as minimum to ten (10) years of prision mayor as maximum and to pay Zenaida Geronimo:

1. P20,000.00 – by way of indemnity
2. P10,000.00 – in moral damages, and
3. P5,000.00 – in nominal damages.

SO ORDERED.

Accused's Notice of Appeal^[7] was given due course in the Order^[8] dated June 7, 2011.

Hence, this appeal raising this assignment of errors:

1. THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF MURDER AND ATTEMPTED MURDER AND IMPOSING THE PENALTY OF RECLUSION PERPETUA (FOR MURDER) AND AN INDETERMINATE SENTENCE OF FOUR (4) YEARS AND TWO (2) MONTHS OF PRISION CORRECCIONAL AS MINIMUM TO TEN (10) YEARS OF PRISION MAYOR AS MAXIMUM (FOR ATTEMPTED MURDER), RESPECTIVELY.

2. THE TRIAL COURT ERRED IN HOLDING THAT THE KILLING OF DENNIS GERONIMO AND THE WOUNDING OF ZENAIDA GERONIMO WAS ATTENDED WITH TREACHERY.

3. THE TRIAL COURT ERRED IN HOLDING THAT THE DEFENSE FAILED TO ESTABLISH UNLAWFUL AGRESSION ON THE PART OF THE VICTIM.

RULING

There is no merit in the appeal.

Accused contends that there was no treachery because the killing and wounding were preceded by an argument between him and the victim. He contends that days before the election, Dennis committed provocative acts against him and even insulted him on the night of July 15, 2002 after the accused learned of his electoral defeat. He insists that he acted in self-defense because there was a real and physical overt act of aggression from Dennis who drew a firearm and pointed it at him.

The Office of the Solicitor General (OSG) counters that that the RTC correctly rejected accused's theory of self-defense. The OSG maintains that neither unlawful aggression nor treachery on the part of Dennis were shown.

For self-defense to be appreciated, the following elements must be shown by clear and convincing evidence: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself.^[9] Unlawful aggression is an indispensable element of self-defense, for if no unlawful aggression attributed to the victim is established, self-defense is unavailing, for there is nothing to repel.^[10]

Unlawful aggression on the part of the victim is the primordial element of the