



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
 Appellee,

G.R. No. 219885

Present:

CARPIO, *Acting C.J.*,
 Chairperson,
 PERALTA,
 MENDOZA,
 LEONEN,* and
 MARTIRES, *JJ.*

- versus -

AUGUSTO F. GALLANOSA, JR.,
 Appellant.

Promulgated:

17 JUL 2017

Marlene Gonzales-Sison

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DECISION

CARPIO, *Acting C.J.*:

This is an appeal from the 31 July 2014 Decision¹ of the Court of Appeals in CA-G.R. CR-HC No. 05887, affirming with modifications the trial court's decision, convicting appellant Augusto F. Gallanosa, Jr. (appellant) of two counts of murder in Criminal Case Nos. 1631 and 1632.

Appellant, among other accused, was charged with two counts of murder in two separate Informations:

Criminal Case No. 1631

The undersigned Prosecutor accuses AUGUSTO F. GALLANOSA, JR., alias "Aday" and AUGUSTO GALLANOSA, JR. [sic], alias "Onto" both of Barangay Banogao, Matnog, Sorsogon of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code, as amended, committed as follows:

* On official leave.

¹ Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Rosmari D. Carandang and Edwin D. Sorongon concurring.

✓

That on or about the 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 with 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, stone and stab one Nonilon L. 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

The undersigned Prosecutor accuses AUGUSTO F. GALLANOSA, JR., alias "Aday", AUGUSTO GALLANOSA, JR. [sic], alias "Onto", NONITO GALLANOSA alias "Larot", MINDA GALLANOSA and GINA GALLANOSA, all of Barangay Banogao, Matnog, Sorsogon of the crime of MURDER, as defined and penalized under Article 248 of the Revised Penal Code, as amended, committed as follows:

That on or about the 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 with treachery and abuse of superior strength: Accused Augusto F. Gallanosa, Sr., Nonito Gallanosa, Minda Gallanosa and Gina Gallanosa, all armed with stones and accused Augusto F. Gallanosa, Jr. armed with a bladed weapon, conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully and feloniously attack, assault, stone 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

Appellant and Minda Gallanosa⁴ pleaded not guilty upon arraignment. The other accused, namely, Augusto Gallanosa, Sr. (Onto), Nonito Gallanosa, and Gina Gallanosa are at large. The two cases were tried jointly.

The prosecution presented four witnesses: (1) Lolita Frencillo Espinar, the sister of Dante, who witnessed the incident from the barangay hall which was 30 meters away; (2) Medina Frencillo, wife of Nonilon; (3) Maricel Frencillo, the common-law wife of Dante; and (4) Dr. Rossana Galeria, Municipal Health Officer of Matnog, Sorsogon, who examined the cadavers of the victims.

² Records (Criminal Case No. 1631), p. 1.

³ Records (Criminal Case No. 1632), p. 1.

⁴ Also referred to as Luzviminda Gallanosa in the Records.

The prosecution alleged that at around 3:00 p.m. on 6 November 2002, Dante Frencillo (Dante) and his common-law wife Maricel were on their way to a wedding celebration. When they passed by the house of appellant, his relatives, namely Minda Gallanosa, Augusto Gallanosa, Sr., Nonito Gallanosa, and Gina Gallanosa, started throwing stones at Dante. Appellant then ran toward Dante and stabbed him on his left abdomen, causing Dante to fall on the ground and die. When Nonilon Frencillo (Nonilon) rushed to assist his brother Dante, he too was stoned by Augusto Gallanosa, Sr. Nonilon ran away but was chased by appellant, who caught up with Nonilon when the latter slipped. Appellant then hacked Nonilon, who was already kneeling with his hands raised, hitting the latter on his arm. Appellant continued to stab Nonilon several times. The examination by Dr. Galeria revealed that Dante sustained a fatal stab wound on his left chest and that the cause of his death was hypovolemic shock from cardiac tamponade secondary to stab wound on the left chest wall.⁵ Nonilon sustained five stab wounds: three on the right front chest, one on the left, and one on his left forearm. The cause of Nonilon's death was hypovolemic shock from the massive hemorrhage secondary to multiple stab wounds.⁶

The defense presented four witnesses, including appellant. The three other witnesses were: (1) Annie Grace Ramirez (Annie Grace), common-law wife of Medel Gallanosa (Medel); (2) Emilio Castedades; and (3) Minda Gallanosa, wife of appellant. The defense alleged that on 6 November 2002, Dante stood outside Medel's house and challenged him to come out of the house. When Medel failed to come out, Dante started throwing rocks at Medel's house. Annie Grace, who was inside the house, went outside and ran towards the house of Onto, Medel's uncle. Onto opened the door of his house and Annie Grace went inside. Thereafter, Dante ran after Onto and tried to stab him, but missed. Appellant arrived at the scene and was also attacked by Dante. Appellant, after evading the knife attack, stabbed Dante with a bolo. Nonilon came and punched appellant. When appellant ran away, Nonilon threw rocks at him and ran after him. Nonilon tried to hit appellant with a piece of wood, but appellant was able to stab him first with his bolo. Appellant later surrendered to Emilio Castedades, a barangay tanod, and appellant was then brought to the police station, where Castedades turned over appellant's bolo to the police.

The Ruling of the Trial Court

The trial court found the eyewitness accounts of prosecution witnesses Lolita Frencillo Espinar and Medina Frencillo to be straightforward and unequivocal. Overall, the trial court found the prosecution's version of the events credible and supported by evidence on record. On the other hand, the defense failed to establish appellant's claim of self-defense. Nevertheless,

⁵ Records (Criminal Case No. 1632), pp. 10-11.

⁶ Records (Criminal Case No. 1631), pp. 10-12.



the trial court held that conspiracy cannot be inferred from the acts of the accused. The trial court adjudged appellant guilty of two counts of murder, but acquitted Minda Gallanosa for lack of evidence.

On 21 November 2011, the trial court rendered a decision, the dispositive portion of which 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 ₱5,878,800.00, ₱51,000.00 as supported by receipts as actual compensatory damages, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱25,000.00 as exemplary damages and to pay the costs.

Likewise, the accused Augusto Gallanosa, Jr. in Crim. Case No. 1632, is hereby sentenced to suffer a penalty of reclusion perpetua. To pay the heirs of Dante Frencillo the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱25,000.00 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 accused in Crim. Case No. 1632, namely: Augusto Gallanosa, Sr. @ Onto; Nonilon 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 Warden 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.⁷

The Ruling of the Court of Appeals

On appeal, appellant contended that the trial court erred in convicting him of murder despite proof of self-defense on his part.

The Court of Appeals affirmed the trial court's decision with modifications. The Court of Appeals found material inconsistencies and implausibilities in the testimonies of appellant and the defense witnesses which render the defense not credible. For instance, defense witness Annie Grace testified that Nonilon tried to hit appellant with a piece of wood, but

⁷ CA rollo, pp. 62-63.

appellant was able to stab him first. Appellant, on the other hand, testified that Nonilon was armed with a knife and tried to stab him. Appellant never mentioned that Nonilon was carrying a piece of wood, with which he tried to hit appellant. Appellant also claimed that the knife used by Dante was recovered by a certain Junior Garduque, but he was not presented as a defense witness. The Court of Appeals also found illogical that appellant, upon hearing someone yelling for help, would rush outside his house carrying a bolo when he thought that his mother, who just suffered a stroke, might have fainted again. On the other hand, the Court of Appeals found more credible the prosecution witnesses, whose testimonies were consistent on material points.

As regards the award of loss of earning capacity, the Court of Appeals found no basis for the trial court to peg Nonilon's annual salary at ₱360,000 in computing the award. Thus, the Court of Appeals awarded temperate damages amounting to ₱500,000 in lieu of actual damages for loss of earning capacity.

On 31 July 2014, the Court of Appeals promulgated its Decision, the dispositive of which states:

WHEREFORE, premises considered, the instant appeal is PARTIALLY GRANTED, such that the decision of the Regional Trial Court of Irosin, Sorsogon, Branch 55 dated 21 November 2011 is AFFIRMED with MODIFICATIONS. As modified, appellant Augusto Gallanosa, Jr., is ORDERED to pay the heirs of the victims as follows:

Criminal Case No. 1631

- 1) loss of earning capacity in the amount of ₱500,000.00;
- 2) actual compensatory damages in the amount of ₱51,000.00;
- 3) civil indemnity in the amount of ₱75,000.00;
- 4) moral damages in the amount of ₱50,000.00;
- 5) exemplary damages in the amount of ₱30,000.00;
- 6) to pay the cost; and
- 7) interest at the rate of 6[%] per annum on the amounts awarded shall be imposed, computed from the time of finality of this decision until full payment thereof.

Criminal Case No. 1632

- 8) civil indemnity in the amount of ₱75,000.00;
- 9) moral damages in the amount of ₱50,000.00;
- 10) exemplary damages in the amount of ₱30,000.00; and
- 11) to pay the cost; and
- 12) interest at the rate of 6[%] per annum on the amounts awarded shall be imposed, computed from the time of finality of this decision until full payment thereof.



The rest of the decision are AFFIRMED.

SO ORDERED.⁸

Hence, this appeal.

The Issue

The issue is whether appellant was able to prove self-defense to acquit him in the two counts of murder.

The Court's Ruling

The appeal is partly meritorious. In Criminal Case No. 1631, we agree with the trial court and the Court of Appeals that the prosecution established beyond reasonable doubt appellant's guilt for the murder of Nonilon. However, in Criminal Case No. 1632, we find appellant guilty only of homicide for the death of Dante.

As found by the trial court and the Court of Appeals, appellant failed to prove self-defense in both cases. Compared with the testimonies of the defense witnesses which were marked with inconsistencies, both the trial court and the appellate court found the testimonies of the prosecution witnesses more credible, convincing, and consistent on material points. Well-settled is the rule that the trial court, having the opportunity to observe the witnesses and their demeanor during the trial, can best assess the credibility of the witnesses and their testimonies.⁹ Furthermore, factual findings of the trial court, when affirmed by the Court of Appeals, are deemed binding and conclusive.¹⁰

Article 11 of the Revised Penal Code provides:

ART. 11. *Justifying circumstances.* – The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights provided that the following circumstances occur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

⁸ Rollo, p. 23.

⁹ *People v. Pareja*, 724 Phil. 759 (2014); *People v. Bonaagua*, 665 Phil. 750 (2011); *People v. Oliquino*, 546 Phil. 410 (2007); *People v. Diunsay-Jalandoni*, 544 Phil. 163 (2007); *Navarrete v. People*, 542 Phil. 496 (2007).

¹⁰ *Heirs of Spouses Liwagon v. Heirs of Spouses Liwagon*, 748 Phil. 675 (2014); *Republic of the Phils. v. Remman Enterprises, Inc.*, 727 Phil. 608 (2014); *David v. David*, 724 Phil. 239 (2014); *People v. Nogra*, 585 Phil. 712 (2008).



Third. Lack of sufficient provocation on the part of the person defending himself.

x x x x

There are three essential elements that must be established by an accused claiming self-defense: (1) the victim committed unlawful aggression amounting to actual and imminent threat to the life of the accused; (2) there was reasonable necessity of the means employed by the accused to prevent or repel the attack; and (3) there was lack of sufficient provocation on the part of the accused claiming self-defense.¹¹

In Criminal Case No. 1631, the victim, Nonilon, was stabbed by appellant five times which caused Nonilon's death. When appellant started attacking Nonilon, the latter was already in a kneeling position with his hands raised, indicating a position of surrender. However, appellant still hacked Nonilon, hitting him on his left forearm. Thereafter, appellant stabbed Nonilon four more times on the right and left chest. Clearly, even if there might be unlawful aggression on the part of Nonilon at the start, it already ceased when Nonilon ran away and when appellant caught up with him. Nonilon, who was already kneeling with his hands raised, was quite helpless when appellant started stabbing him. At that moment, there was no unlawful aggression on the part of Nonilon which amounts to actual or imminent threat to the life of appellant. Thus, the first element of unlawful aggression is already lacking in this case. Appellant's claim that Nonilon tried to stab him first with a knife was belied by the testimony of another defense witness who stated that Nonilon was armed only with a piece of wood which he picked up while running after appellant.¹² Even appellant's wife testified that she only saw Nonilon throwing stones at her husband. Appellant's wife never testified that Nonilon was armed with a knife.¹³

On the damages awarded, we find that moral damages and exemplary damages should each be increased to ₱75,000 in accordance with recent jurisprudence.¹⁴

In Criminal Case No. 1632, appellant claimed that Dante was about to attack his father (Onto) with a knife when he arrived at the crime scene. When Dante faced him and tried to stab him, appellant accidentally stabbed Dante.¹⁵ Both the trial court and the appellate court held that the defense failed to prove self-defense. Appellant's testimony that he "accidentally stabbed" Dante is incongruent with his claim of self-defense. Unlawful aggression, as an essential and primary element of self-defense, must be real

¹¹ *People v. Bosito*, 750 Phil. 183 (2015); *Guevarra v. People*, 726 Phil. 183 (2014).

¹² TSN, 19 August 2009, pp. 6-7.

¹³ TSN, 1 September 2010, pp. 7-8, 15-17.

¹⁴ *People v. Oandasan, Jr.*, G.R. No. 194605, 14 June 2016; *People v. Jugueta*, G.R. 202124, 5 April 2016, 788 SCRA 331.

¹⁵ TSN, 1 March 2011, p. 6.

and imminent and not merely speculative.¹⁶ Other than the claim of some of the defense witnesses that Dante was armed with a knife, which was denied by the prosecution witnesses, the defense failed to prove that Dante tried to stab appellant and his father. The inability of the defense to present the alleged weapon as evidence, alleging that the knife was hidden by Junior Garduque, further weakens their claim¹⁷ especially since the prosecution witnesses were consistent in denying that Dante was carrying a knife when he was stabbed by appellant. As held by the appellate court, such claim by the defense is belied by its failure to subpoena Junior Garduque to testify on the matter, even if the defense knew Garduque's address. Appellant even testified that Junior Garduque, who was then a barangay tanod, was still residing in Barangay Banogao, Municipality of Matnog.¹⁸ However, we find that treachery was not clearly established in this case which would qualify the crime to murder. The essence of treachery is the sudden and unexpected attack on an unsuspecting victim who is deprived of any chance to defend himself, without the slightest provocation on the part of the victim.¹⁹ In this case, the prosecution witnesses merely testified that appellant arrived at the crime scene and stabbed Dante. No other details regarding the manner of stabbing were offered in the testimonies which would clearly indicate treachery in the attack.

Thus, appellant should only be liable for homicide for killing Dante. Under Article 249 of the Revised Penal Code, the penalty for homicide is *reclusion temporal*. Considering appellant's voluntary surrender which is a mitigating circumstance, the penalty should be imposed in its minimum period (that is, from 12 years and 1 day to 14 years and 8 months).²⁰ Under the Indeterminate Sentence Law, the indeterminate penalty to be imposed is *prision mayor* in any of its periods as minimum to *reclusion temporal* in its minimum period as maximum. Accordingly, appellant's indeterminate penalty is 6 years and 1 day of *prision mayor*, as minimum, to 12 years and 1 day of *reclusion temporal*, as maximum. Appellant is also liable to pay the heirs of Dante the amount of ₱50,000 as civil indemnity, ₱50,000 as moral damages, and ₱50,000 as temperate damages. Temperate damages may be awarded where no receipts or other evidence was presented as proof of funeral or burial expenses.²¹

WHEREFORE, we **AFFIRM** the Decision dated 31 July 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05887 **WITH MODIFICATIONS**, as follows:

¹⁶ *Dela Cruz v. People*, 747 Phil. 376 (2014).

¹⁷ *People v. Bosito*, 750 Phil. 183, 192-193 (2015), citing *People v. Satonero*, 617 Phil. 983, 993 (2009).

¹⁸ TSN, 1 March 2011, p. 14.

¹⁹ *People v. Oandasan, Jr.*, G.R. No. 194605, 14 June 2016; *People v. Dulin*, 762 Phil. 24 (2015).

²⁰ Article 64(2) of the Revised Penal Code provides that "[w]hen only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period."

²¹ *People v. Macaspac*, G.R. No. 198954, 22 February 2017.



(A) In Criminal Case No. 1631, the amounts of moral damages and exemplary damages are increased to ₱75,000 each. Appellant Augusto F. Gallanosa, Jr. is ordered to pay interest on the amounts awarded at the legal rate of 6% *per annum* from the date of finality of this judgment until fully paid.

(B) In Criminal Case No. 1632, appellant Augusto F. Gallanosa, Jr. is found **GUILTY** beyond reasonable doubt of the crime of **HOMICIDE** and is sentenced to suffer the indeterminate penalty of 6 years and 1 day of *prision mayor*, as minimum, to 12 years and 1 day of *reclusion temporal*, as maximum. Appellant is ordered to pay the heirs of Dante L. Frencillo: (1) civil indemnity in the amount of ₱50,000; (2) moral damages in the amount of ₱50,000; and (3) temperate damages in the amount of ₱50,000. Appellant is also ordered to pay the cost of the suit and to pay interest on the amounts awarded at the legal rate of 6% *per annum* from the date of finality of this judgment until fully paid.

SO ORDERED.




ANTONIO T. CARPIO
Acting Chief Justice


WE CONCUR:



DIOSDADO M. PERALTA
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice

(on official leave)
MARVIC M.V.F. LEONEN
Associate Justice


SAMUEL R. MARTIRES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Acting Chief Justice