



Republic of the Philippines
Supreme Court
 Manila

CERTIFIED TRUE COPY
Wilfredo V. Lapidan
 WILFREDO V. LAPIDAN
 Division Clerk of Court
 Third Division

AUG 09 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 227421

Present:

- versus -

VELASCO, JR., *J.*, *Chairperson*,
 BERSAMIN,
 LEONEN,
 MARTIRES, and
 GISMUNDO, *JJ.*

RODOLFO OLARBE y
BALIHANGO,
 Accused-Appellant.

Promulgated:

July 23, 2018

X-----

Wilfredo V. Lapidan

X

DECISION

BERSAMIN, J.:

The accused who shows by clear and convincing evidence that the death of the victim arose from the need for self-preservation in the face of the victim's deadly unlawful aggression, and there was a reasonable necessity of the means employed to prevent or repel the same, is entitled to acquittal on the ground of self-defense in the absence of any indication of his having provoked such unlawful aggression.

In self-defense and defense of stranger, the circumstances as the accused perceived them at the time of the incident, not as others perceived them, should be the bases for determining the merits of the plea.

The Case

For the killing of the late Romeo Arca, accused Rodolfo Olarbe y Balihang (Olarbe) was charged with and convicted of murder by the

Regional Trial Court (RTC), Branch 27, in Santa Cruz, Laguna through the judgment rendered on August 13, 2014 in Criminal Case No. SC-12274.¹

On appeal, the Court of Appeals (CA) affirmed the conviction on March 22, 2016.²

Antecedents

The information charged Olarbe with murder, *viz.*:

That on or about May 7, 2006 at about 12:00 o'clock midnight, at Sitio Pananim, Municipality of Luisiana, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with evident premeditation and treachery and with the use of a rifle (airgun) converted to caliber .22 and a bolo, did then and there, willfully, unlawfully and feloniously shoot and hack one ROMEO ARCA with the said weapons, thereby inflicting upon him gunshot wound and hacking wounds on the different parts of his body which resulted to (sic) his instantaneous death, to the damage and prejudice of his surviving heirs.

CONTRARY TO LAW.³

The CA recounted the factual and procedural background of the case in its assailed decision thusly:

Arraigned, OLARBE initially pled not guilty to the crime charged. Upon re-arraignment, OLARBE pleaded guilty but subsequently withdrew his plea of guilt and manifested for the presentation of his defense. Thereafter, trial on the merits ensued.

The prosecution's diegesis of the case is synthesized as follows:

On 8 May 2006 at around 12:30 o'clock midnight, OLARBE voluntarily surrendered to police officers SPO2 Vivencio Aliazas, PO3 Ricardo Cruz and PO1 William Cortez at the Police Station of Luisiana, Laguna. OLARBE informed them that he happened to have killed Romeo Arca (Arca) in Sitio Pananim, Luisiana, Laguna. Forthwith, OLARBE was booked, arrested and detained at the police station. Thereafter, the police officers proceeded to the crime scene and found the lifeless body of Arca with several wounds and the bolo used by OLARBE in killing him. The *Death Certificate* revealed that Arca's antecedent cause of death was gunshot wounds and his immediate cause of death was hacked wounds.

For his part, OLARBE invoked self-defense and avowed –

¹ CA rollo, pp. 45-57; penned by Presiding Judge Cynthia R. Mariño-Ricablanca.

² Rollo, pp. 2-10; penned by Associate Justice Japar B. Dimaampao, with the concurrence of Associate Justice Franchito N. Diamante and Associate Justice Carmelita Salandanan Manahan.

³ CA rollo, p. 45.

On the fateful incident, he and his wife Juliet were sleeping in their house in *Barangay* San Antonio, Sitio Pananim, Luisiana, Laguna. Suddenly they were awakened by the sound of a gunshot and shouting from Arca who appeared to be drunk. Arca was holding a rifle (an airgun converted to a calibre .22) and shouted "*mga putang ina ninyo, pagpapatayin ko kayo.*" Then, Arca forcibly entered their house and aimed the gun at them. OLARBE immediately grabbed the gun from him and they grappled for its possession. OLARBE managed to wrest the gun away from Arca. In a jiff, OLARBE shot Arca causing the latter to lean sideward ("*napahilig*"). Nevertheless, Arca managed to get his *bolo* from his waist and continued to attack them. OLARBE grabbed the *bolo* and in their struggle for its possession, they reached the outer portion of the house. OLARBE was able to wrestle the *bolo* and instantly, he hacked Arca. After the killing incident, OLARBE voluntarily surrendered to the police authorities.⁴

Judgment of the RTC

Rejecting Olarbe's pleas of self-defense and defense of stranger, the RTC pronounced him guilty of murder as charged. It observed that the initial unlawful aggression by Arca had ceased when Olarbe shot him in the head and caused him to "lean sideward." It disbelieved Olarbe's insistence that Arca had still been able to grab his *bolo* and assault Olarbe's common-law spouse therewith for being implausible considering that Arca had by then been hit in the head. It held that Olarbe's testimony that he had wrested the *bolo* from Arca after grappling for its control, and had then hacked him with it was improbable and not in accord with the natural order of things because the injury in the head had already weakened and subdued Arca; and that the killing was treacherous because Olarbe had hacked the then unarmed and weakened victim.

The dispositive portion of the judgment of the RTC reads:

WHEREFORE, this court finds that herein accused was unable to prove the justifying circumstance of self-defense by clear, satisfactory and convincing evidence that excludes any vestige of criminal aggression on his part and further, he employed treachery when he killed the victim Romeo Arca. Thus, this Court finds the accused Rodolfo Olarbe y Balihango **GUILTY** of "Murder".

On the other hand, finding that herein accused voluntarily surrendered to the police authorities of the Municipal Police Station of Luisiana, Laguna immediately after killing Romeo Arca, he is entitled to the said mitigating circumstance. The accused Rodolfo Olarbe y Balihango is thereby hereby sentenced to the minimum penalty of imprisonment for the crime of murder, which is a period of TWENTY (20) YEARS AND ONE (1) DAY TO RECLUSION PERPETUA.

⁴ Rollo, pp. 4-5.

The accused Rodolfo Olarbe y Balihangko is also hereby ordered to pay to the heirs of Romeo Arca the following:

Civil indemnity in the amount of ₱75,000.00;

Moral damages in the amount of ₱50,000.00;

Actual damages in the following amounts – ₱1,000.00 as expenses for church services from the Iglesia Filipina Independiente; the amount of ₱1,200.00 for expenses incurred in Jeralyn's Flower Shop; the amount of ₱20,000.00 paid to Mancenido Funeral Service; fees paid to the Municipal Treasurer of Luisiana in the amount of ₱150.00; and, the amount of ₱15,000.00 paid for the burial lot; and,

Exemplary damages in the amount of ₱30,000.00.

SO ORDERED.⁵

Decision of the CA

On appeal, the CA affirmed the conviction of Olarbe because the factual findings of the RTC were consistent with the evidence on record and accorded with human experience; and because treachery had attended the killing. The *falla* of the assailed decision reads:

WHEREFORE, the *Appeal* is hereby **DENIED**. The *Judgment* dated 13 August 2014 of the Regional Trial Court, Fourth Judicial Region, Santa Cruz, Laguna, Branch 27, in Criminal Case No. SC-12274, is **AFFIRMED with MODIFICATION** in that accused-appellant Rodolfo Olarbe is **ORDERED** to pay temperate damages in the amount of ₱25,000.00. He is further **ORDERED** to pay interest at the rate of six percent (6%) per annum on the civil indemnity, moral, exemplary and temperate damages awarded from the finality of this judgment until fully paid.

SO ORDERED.⁶

Hence, this appeal.

The accused and the Office of the Solicitor General (OSG) have separately manifested that they would no longer be filing supplemental briefs in this appeal; and prayed that their respective briefs filed in the CA should be considered.⁷

⁵ CA *rollo*, p. 57

⁶ *Rollo*, p. 9.

⁷ *Id.* at 19-21; 24-25.

Issue

In his appellant's brief filed in the CA, Olarbe submitted that it was erroneous to reject his pleas of self-defense and defense of stranger because he had killed Arca to save himself and his common-law wife from the latter's unlawful aggression; that his use of the victim's gun and *bolo* to repel or stop the unlawful aggression was necessary and reasonable; and that the killing was consequently legally justified.

The OSG countered that it was Olarbe who had mounted the unlawful aggression against Arca; and that the latter had been defenseless when Olarbe hacked him to death.

Ruling of the Court

The appeal has merit.

An accused who pleads any justifying circumstance in Article 11 of the *Revised Penal Code* admits to the commission of acts that show the commission of a crime. It thus becomes his burden to prove the justifying circumstance with clear and convincing evidence; otherwise, his conviction for the crime charged follows.⁸

In order for Olarbe to exonerate himself on the ground of self-defense under Article 11, paragraph 1,⁹ of the *Revised Penal Code*, he must establish the following facts, namely: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense.

Olarbe also invoked defense of stranger under Article 11, paragraph 3,¹⁰ of the *Revised Penal Code* because Arca was likewise attacking his common-law spouse. Defense of stranger requires clear and convincing

⁸ *Velasquez v. People*, G.R. No. 195021, March 15, 2017, 820 SCRA 438, 442.

⁹ Article 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 concur;

First. Unlawful aggression.

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

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

x x x x

¹⁰ Article 11. *Justifying circumstances*. — The following do not incur any criminal liability:

x x x x

3. Anyone who acts in defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of this article are present and that the person defending be not induced by revenge, resentment, or other evil motive.

x x x x

evidence to prove the following, to wit: (1) unlawful aggression by the victim; (2) reasonable necessity of the means to prevent or repel it; and (3) the person defending be not induced by revenge, resentment or other evil motive.¹¹

The indispensable requisite for either of these justifying circumstances is that the victim must have mounted an unlawful aggression against the accused or the stranger. Without such unlawful aggression, the accused is not entitled to the justifying circumstance.¹² The essence of the unlawful aggression indispensable in self-defense or defense of stranger has been fully discussed in *People v. Nugas*,¹³ thus:

Unlawful aggression on the part of the victim is the primordial element of the justifying circumstance of self-defense. Without unlawful aggression, there can be no justified killing in defense of oneself. **The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat.** Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful.

Unlawful aggression is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot.

Let us now revisit the events of that fateful night of May 7, 2006. Arca, armed with the rifle (described as an airgun converted into a caliber

¹¹ *Cabuslay v. People*, G.R. No. 129875, September 30, 2005, 471 SCRA 241, 253.

¹² *People v. Fontanilla*, G.R. No. 177743, January 25, 2012, 664 SCRA 150, 153 ((xxx It is basic that once an accused in a prosecution for murder or homicide admitted his infliction of the fatal injuries on the deceased, he assumed the burden to prove by clear, satisfactory and convincing evidence the justifying circumstance that would avoid his criminal liability. **Having thus admitted being the author of the death of the victim, [the accused] came to bear the burden of proving the justifying circumstance to the satisfaction of the court, and he would be held criminally liable unless he established self-defense by sufficient and satisfactory proof. He should discharge the burden by relying on the strength of his own evidence, because the Prosecution's evidence, even if weak, would not be disbelieved in view of his admission of the killing.** Nonetheless, the burden to prove guilt beyond reasonable doubt remained with the State until the end of the proceedings.)

¹³ G.R. No. 172606, November 23, 2011, 661 SCRA 159, 167-168.

.22) and the *bolo*, went to the house of Olarbe towards midnight. The latter and his household were already slumbering, but were roused from bed because Arca fired his gun and was loudly shouting, *Mga putang ina ninyo, pagpapatayin ko kayo*. Thereafter, Arca forcibly entered Olarbe's house. Olarbe managed to grab the gun of Arca, and they struggled for control of it. Upon wresting the gun from Arca, Olarbe fired at him, causing him to totter. But Arca next took out the *bolo* from his waist and charged at Olarbe's common-law spouse. This forced Olarbe to fight for possession of the *bolo*, and upon seizing the *bolo*, he hacked Arca with it.

Arca's death was certified to have been due to the gunshot on the head and hacking wounds. The CA noted the following injuries, aside from the gunshot wound in the head, namely:

- Lacerated wound on the forehead;
- Lacerated wound, front rib area;
- Lacerated wound on the left upper quadrant;
- Lacerated wound on the left lower quadrant;
- Lacerated wound on the occipital area
- Two (2) hacking wounds posterior of neck; and
- Hacking wound on lumbar area.¹⁴

Only Olarbe's account of the incident existed in the records, but instead of giving weight to the account, the RTC and the CA rejected his pleas of self-defense and defense of stranger based on their common holding that Arca had been weakened from being hit on the head; and concluded that consequently Arca could not have charged with his *bolo*.

The CA's rejection of Olarbe's pleas of self-defense and defense of stranger was unwarranted.

To start with, there was no credible showing that the shot to the head had rendered Arca too weak to draw the *bolo* and to carry on with his aggression in the manner described by Olarbe. The conclusion of the RTC and the CA thereon was obviously speculative. Secondly, the State did not demonstrate that the shot from the airgun converted to .22 caliber fired at close range sufficed to disable Arca from further attacking with his *bolo*. Without such demonstration, the RTC and the CA clearly indulged in pure speculation. Thirdly, nothing in the record indicated Arca's physical condition at the time of the incident. How could the CA then reliably conclude that he could not have mounted the *bolo* assault? And, lastly, to rule out any further aggression by Arca with his *bolo* after the shot in the head was again speculative. On the other hand, our substantial judicial experience instructs that an armed person boldly seeking to assault others –

¹⁴ Rollo, p. 8.

like Arca – would have enough adrenaline to enable him to persist on his assault despite sustaining a wound that might otherwise be disabling.

To us, Olarbe's account of what did happen on that fateful night was highly plausible. At the minimum, the details and sequence of the events therein described conformed to human experience and the natural course of things. Armed with both the gun and the *bolo*, Arca not only disturbed Olarbe's peace but physically invaded the sanctity of latter's home at midnight. Given that the aggression by Arca was unprovoked on the part of Olarbe, and with no other person disputing the latter's account, we should easily see and understand why Olarbe would feel that his and his common-law spouse's lives had been put in extreme peril.

In addition, Olarbe's conduct following the killing of Arca – of voluntarily surrendering himself to the police authorities immediately after the killing (*i.e.*, at around 12:30 o'clock in the early morning of May 8, 2006), and reporting his participation in the killing of Arca to the police authorities – bolstered his pleas of having acted in legitimate self-defense and legitimate defense of his common-law spouse. Such conduct manifested innocence.

To disbelieve Olarbe's account is to give primacy to surmise and speculation. That is not how courts of law whose bounden and sworn duty is to dispense justice should sit in judgment in a criminal trial. Judges should assiduously sift the records, carefully analyze the evidence, and reach conclusions that are natural and reasonable.

Did Olarbe clearly and convincingly establish the justifying circumstances invoked?

We find that Arca committed continuous and persistent unlawful aggression against Olarbe and his common-law spouse that lasted from the moment he forcibly barged into the house and brandished his gun until he assaulted Olarbe's common-law spouse with the *bolo*. Such armed assault was not a mere threatening act. Olarbe was justified in believing his and his common-law spouse's lives to be in extreme danger from Arca who had just fired his gun in anger outside their home and whose threats to kill could not be considered idle in the light of his having forced himself upon their home. The imminent threat to life was positively strong enough to induce Olarbe to act promptly to repel the unlawful and unprovoked aggression. For Olarbe to hesitate to act as he had done would have cost him his own life. Arca's being dispossessed of his gun did not terminate the aggression, for, although he had been hit on the head, he quickly reached for the *bolo* and turned his assault towards Olarbe's common-law spouse. Olarbe was again forced to

struggle for control of the *bolo*. The swiftness of the action heightened Olarbe's sense that the danger to their lives was present and imminent.

In judging pleas of self-defense and defense of stranger, the courts should not demand that the accused conduct himself with the poise of a person not under imminent threat of fatal harm. He had no time to reflect and to reason out his responses. He had to be quick, and his responses should be commensurate to the imminent harm. This is the only way to judge him, for the law of nature – the foundation of the privilege to use all reasonable means to repel an aggression that endangers one's own life and the lives of others – did not require him to use unerring judgment when he had the reasonable grounds to believe himself in apparent danger of losing his life or suffering great bodily injury.¹⁵ The test is whether his subjective belief as to the imminence and seriousness of the danger was reasonable or not,¹⁶ and the reasonableness of his belief must be viewed from his standpoint at the time he acted.¹⁷ The right of a person to take life in self-defense arises from his belief in the necessity for doing so; and his belief and the reasonableness thereof are to be judged in the light of the circumstances as they then appeared to him, not in the light of circumstances as they would appear to others or based on the belief that others may or might entertain as to the nature and imminence of the danger and the necessity to kill.¹⁸

The remaining elements of the justifying circumstances were likewise established.

Reasonable necessity of the means employed to repel the unlawful aggression does not mean absolute necessity. It must be assumed that one who is assaulted cannot have sufficient tranquility of mind to think, calculate and make comparisons that can easily be made in the calmness of reason. The law requires rational necessity, not indispensable need. In each particular case, it is necessary to judge the relative necessity, whether more or less imperative, in accordance with the rules of rational logic. The accused may be given the benefit of any reasonable doubt as to whether or not he employed rational means to repel the aggression.¹⁹

In determining the reasonable necessity of the means employed, the courts may also look at and consider the number of wounds inflicted. A large number of wounds inflicted on the victim can indicate a determined effort on the part of the accused to kill the victim and may belie the reasonableness of the means adopted to prevent or repel an unlawful act of an aggressor.²⁰ Here, however, although Arca sustained several wounds, the

¹⁵ *People v. White*, 409 N. E., 2d 73, 42 Ill Dec. 578, 87 Ill. App. 3d 321.

¹⁶ *Baker v. Commonwealth*, 677 S. W. 2d 876.

¹⁷ *State v. Leidholm*, 334 N. W. 2d 811; *Tanguma v. State*, App.-Corpus Christi, 721 S.W. 2d 408.

¹⁸ 40 CJS § 131.

¹⁹ *Jayne v. People*. G.R. No. 124506, September 9, 1999, 314 SCRA 117, 123-124.

²⁰ *People v. Guarin*, G.R. No. 130708, October 22, 1999, 317 SCRA 244, 253-254.

majority of the wounds were lacerations whose nature and extent were not explained. The lack of explanations has denied us the means to fairly adjudge the reasonableness of the means adopted by Olarbe to prevent or repel Arca's unlawful aggression. Accordingly, to rule out reasonable necessity of the means adopted by Olarbe solely on the basis of the number of wounds would be unfair to him. In any event, we have to mention that the rule of reasonable necessity is not ironclad in its application, but is dependent upon the established circumstances of each particular case.

The courts ought to remember that a person who is assaulted has neither the time nor the sufficient tranquility of mind to think, calculate and choose the weapon to be used. For, in emergencies of this kind, human nature does not act upon processes of formal reason but in obedience to the instinct of self-preservation; and when it is apparent that a person has reasonably acted upon this instinct, it is the duty of the courts to hold the actor not responsible in law for the consequences.²¹ Verily, the law requires rational equivalence, not material commensurability, viz.:

It is settled that reasonable necessity of the means employed does not imply material commensurability between the means of attack and defense. What the law requires is *rational equivalence*, in the consideration of which will enter the principal factors **the emergency, the imminent danger to which the person attacked is exposed, and the instinct, more than the reason, that moves or impels the defense, and the proportionateness thereof does not depend upon the harm done, but rests upon the imminent danger of such injury.**²² [Bold underscoring supplied for emphasis]

Lastly, the absence of any showing that Olarbe had provoked Arca, or that he had been induced by revenge, resentment or other evil motive has been equally palpable. We deem to be established, therefore, that the third elements of the justifying circumstances of self-defense and defense of stranger were present.

With Olarbe being entitled to the justifying circumstances of self-defense and defense of a stranger, his acquittal follows.

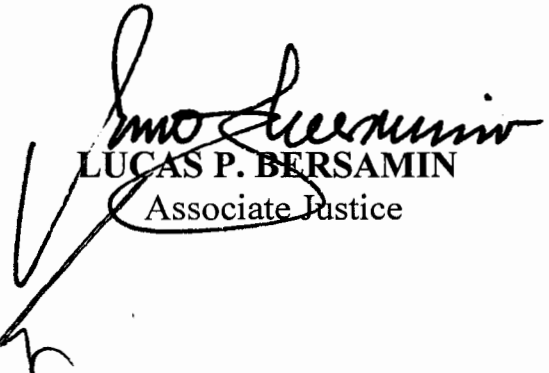
WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on March 22, 2016 in CA-G.R. CR-HC No. 07112; **ACQUITS** accused **RODOLFO OLARBE y BALIHANGO** on the grounds of **SELF-DEFENSE** and **DEFENSE OF A STRANGER**; **DECLARES** him **NOT CIVILLY LIABLE** to the heirs of the late Romeo Arca; and **DIRECTS** his **IMMEDIATE RELEASE FROM CONFINEMENT** unless he is otherwise legally confined for another cause.

²¹ *Jayne v. People*, supra, note 19, at 124.

²² *People v. Gutual*, G.R. No. 115233, February 22, 1996, 254 SCRA 37, 49.

Let a copy of this decision be sent to the Director, Bureau of Corrections, in Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is **DIRECTED TO REPORT** the action taken to this Court within five days from receipt of this decision.

SO ORDERED.


LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice

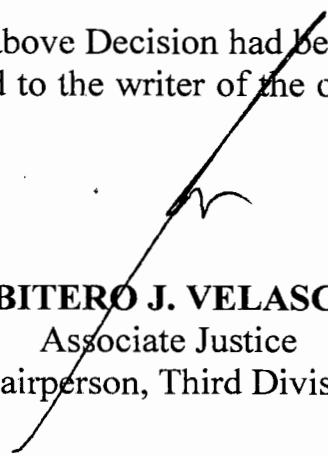

MARVIC M.V.F. LEONEN
Associate Justice


SAMUEL R. MARTIRES
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice


ATTESTATION

I attest 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.

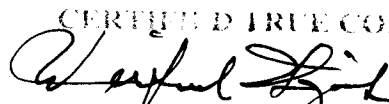

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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

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WILFREDO E. BRIAN
Division Clerk of Court
Third Division

AUG 09 2018