



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
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SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 198449

Present:

- versus -

PERLAS-BERNABE, S.A.J.,  
*Chairperson,*

ERNESTO MONTILLA y CARIAGA  
and DALE DUAY,

HERNANDO,\*  
LAZARO-JAVIER,\*\*  
GAERLAN, and  
DIMAAMPAO, JJ.

Accused,

ERNESTO MONTILLA y CARIAGA,  
Accused-Appellant.

Promulgated:

NOV 22 2021

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DECISION

GAERLAN, J.:

This appeal assails the Decision<sup>1</sup> dated February 10, 2011 of the Court of Appeals (CA), Cebu City, in CA-G.R. CR-HC No. 00371, which affirmed the Decision<sup>2</sup> dated November 18, 2004, rendered by the Regional Trial Court (RTC) of Cadiz City, Negros Occidental, Branch 60, in Criminal Case No. 2292-S, finding the accused-appellant Ernesto Montilla y Cariaga (accused-appellant) guilty beyond reasonable doubt of the crime of Murder.

Antecedents

The accused-appellant and one Dale Duay (Duay) were charged with the crime of Murder by virtue of an Amended Information dated July 4, 2002, the accusatory portion of which reads:

\* On official leave.

\*\* Designated additional Member per Raffle dated August 2, 2021.

<sup>1</sup> *Rollo*, pp. 3-18; penned by Associate Justice Edwin D. Sorongon with Associate Justices Pampio A. Abarintos, Socorro B. Inting, concurring.

<sup>2</sup> *CA rollo*, pp. 31-42; rendered by Executive Judge Renato D. Muñoz.

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That on or about the 20<sup>th</sup> day of August 1999, in the City of Sagay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, conspiring, confederating and helping each other, with evident premeditation and treachery, at the instigation of the accused DALE DUAY, the [accused-appellant] ERNESTO MONTILLA did then and there willfully, unlawfully and feloniously, suddenly, unexpectedly and treacherously attack, assault and shoot RANIE LAPIDANTE with a homemade firearm known locally as a "PUGALITE" for which firearm the accused were not licensed to possess, thereby inflicting injuries on RANIE LAPIDANTE which caused the death of the said RANIE LAPIDANTE.

ACT CONTRARY TO LAW.<sup>3</sup>

Duay remained at large. Thus, the case proceeded only against the accused-appellant.<sup>4</sup>

When arraigned, accused-appellant, assisted by counsel, entered a plea of "not guilty."<sup>5</sup> However, during pre-trial, the accused-appellant interposed that he merely acted in self-defense. Thus, a reverse trial was conducted.<sup>6</sup>

The defense presented the accused-appellant as its lone witness. He testified that in the evening of August 20, 1999, he was in the house of his aunt, Duay, when he heard the victim Ranie Lapidante (victim) shout "those who are evil get out." The latter was then accompanied by Armando Dipos (Dipos) and Jonathan Molina (Jonathan). Thereafter, the victim forced open the door of Duay's house and he and his group approached the accused-appellant. The victim then suddenly drew his pistol. Instinctively, the accused-appellant tried to gain possession of the gun. While grappling, the gun suddenly went off and hit the victim on the stomach. The accused-appellant immediately went down the house and left through the back door leaving the victim lying on the bed of Duay.<sup>7</sup>

The prosecution, for its part, presented as witnesses Jonathan, Dipos, Fernando Septimo (Septimo), and Lucila Jacome (Jacome), Medical Records Officer of the Corazon Locsin Montelibano Memorial Regional Hospital.<sup>8</sup>

Their testimonies tend to establish that at around 9:30 in the evening of August 20, 1999, Jonathan, Septimo, and the victim, accompanied by Purok President Dipos, went to the house of Duay at Barangay Siwahon, Sagay City. When they arrived, it was Duay who opened the door and let them in. Already inside the house were one Danilo Roba and his wife Myrna. Duay explained to

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<sup>3</sup> Id. at 31.

<sup>4</sup> Id. at 31-32.

<sup>5</sup> Records, pp. 49, 67, 69.

<sup>6</sup> Id. at 50.

<sup>7</sup> CA rollo, p. 32.

<sup>8</sup> Rollo, pp. 5-10.

the group that she requested their presence as she intended to ask Lapidante to testify in her favor in a case to be heard at Sagay City. Hearing this, Lapidante refused. After the conversation, the group asked the permission of Duay to go home but the latter persuaded them to stay longer and have some coffee. Duay instructed Myrna to get some coffee who then left the house. Meanwhile, Jonathan and Dipos went outside at about 20 meters away. While seated, the two saw Myrna accompanied by the accused-appellant who was carrying a firearm. The accused-appellant pointed a gun at Dipos but later retreated when Dipos identified himself.<sup>9</sup>

The accused-appellant proceeded to the house of Duay. While inside, per order of Duay, the accused-appellant shot the victim. A commotion ensued as everyone panicked while trying to get out of the house. The accused-appellant jumped out of the window. Jonathan and Septimo attended to the victim and brought him to a hospital at Barangay Bato. The victim was later transferred to the Bacolod Provincial Hospital where he perished.<sup>10</sup>

Based on the certification issued by the attending physician, the victim suffered: "GSW (L) Mid abdomen, penetrating cavity with F.B. (slug) in SITU perforating ileus 4 pts., sigmoid 8 pts. 0.5 cm. laceration bladder with moderate fecal spillage and moderate hemoperitorium." The victim's death certificate indicated the immediate cause of death as "Acute Tubular Necrosis two (2) degrees to Acute Renal Failure"; and the antecedent cause as "massive blood loss two (2) degrees to penetrating while the underlying cause is Reforating GSW (L) Abdomen S/P Ex-Sap."<sup>11</sup>

On rebuttal, the defense recalled the accused-appellant to the witness stand. The accused-appellant averred that contrary to the testimonies of the prosecution witnesses, it was Septimo who was carrying a bolo while the victim was armed with a "pugalite." Accused-appellant reiterated his testimony that the victim forcibly opened the door of Duay's house and ransacked the belongings of the occupants. Further, he denied that any conversation happened, more so relating to a land dispute. Finally, he insisted that it was the victim who aimed the "pugalite" at him forcing him to grapple with its possession; and it was in the course of which that the victim was hit.<sup>12</sup>

### **The RTC Ruling**

On November 18, 2004, the RTC rendered its Decision,<sup>13</sup> the dispositive portion of which reads:

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<sup>9</sup> Id. at 33-36.

<sup>10</sup> Id.

<sup>11</sup> Id. at 35.

<sup>12</sup> Id. at 36.

<sup>13</sup> CA *rollo*, pp. 31-42.

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WHEREFFORE, in view of all the foregoing, this Court finds and so holds the [accused-appellant] Ernesto Montilla (detained) GUILTY beyond reasonable doubt of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code as amended and is hereby sentenced to the penalty of RECLUSION PERPETUA, including the accessory penalties provided for by law. There being no mitigating nor aggravating circumstance attendant to the commission of the crime.

The [accused-appellant] Ernesto Montilla y Cariaga is further ordered to pay the heirs of the victim the amount [of] FIFTY THOUSAND PESOS (P50,000.00) by way of indemnity for the death of the victim, plus the reasonable amount of FIFTY THOUSAND PESOS (P50,000.00) by way of moral damages.

The [accused-appellant] Ernesto Montilla y Cariaga being preventively detained is hereby entitled to the full credit of his detention pursuant to R.A. No. 6127, and is hereby ordered immediately committed to the National Penitentiary for service of his sentence pursuant to Circular No. 4-92-A dated April 20, 1992.

The case against Dale Duay who is still at-large is hereby ordered ARCHIVED to be immediately revived upon her arrest and the Warrant and Subpoena Officer of Sagay City PNP is hereby directed to explain in writing within ten (10) days from receipt of this Decision why the accused has not been arrested up to the present.

Furnish copies of this Decision to all counsels, the [accused-appellant], the Warrant and Subpoena Officer of Sagay City, and the private complainant.

Costs against [accused-appellant] Ernesto Montilla y Cariaga.

SO ORDERED.<sup>14</sup>

The RTC found the accused-appellant's narration unworthy of belief finding that the same is contrary to the ordinary course of events, and uncorroborated by independent evidence. The killing having been attended by the qualifying circumstance of treachery, the RTC adjudged the accused-appellant guilty of the crime of Murder.<sup>15</sup>

### The CA Ruling

Acting on the appeal filed by the accused-appellant, the CA rendered the herein assailed Decision<sup>16</sup> on February 10, 2011, affirming the findings of the RTC as follows:

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<sup>14</sup> Id. at 41-42.

<sup>15</sup> Id. at 38-40.

<sup>16</sup> *Rollo*, pp. 3-18.

**WHEREFORE**, the Decision of the Regional Trial Court (RTC) of Negros Occidental, Branch 60, Cadiz City, finding accused-appellant **ERNESTO MONTILLA y CARIAGA** guilty of Murder defined and penalized under Article 248 of the Revised Penal Code as amended, sentencing him to suffer the penalty of RECLUSION PERPETUA and its accessory penalties and to pay the heirs of the victim the amount of FIFTY THOUSAND PESOS (P50,000.00) by way of indemnity for the death of the victim, plus the reasonable amount of FIFTY THOUSAND PESOS (P50,000.00) by way of moral damages, is hereby **AFFIRMED in toto**.

**SO ORDERED.**<sup>17</sup>

In essence, the CA reiterated and adopted the factual findings and conclusions of law arrived at by the RTC.

The accused-appellant filed a Notice of Appeal<sup>18</sup> before the CA on February 23, 2011. In a Resolution<sup>19</sup> dated May 17, 2011, the CA gave due course to the appeal and ordered that the records of the case be forwarded to this Court.

This Court, in a Resolution<sup>20</sup> dated November 23, 2011, required the parties to file their respective supplemental briefs.

In compliance, the plaintiff-appellee filed a *Manifestation and Motion*<sup>21</sup> on March 1, 2012. Therein, it manifested that as it was unable to access records of the case, it did not file an appellee's brief before the CA and therefore had nothing to supplement. Nevertheless, plaintiff-appellee expressed that it intends to adopt the findings of fact in the CA Decision dated February 10, 2011.<sup>22</sup>

On June 1, 2012, the plaintiff-appellee filed a *Compliance (In Lieu of Supplemental Brief)*<sup>23</sup> in which it argued that the accused-appellant's self-defense was not supported by evidence and that treachery was correctly appreciated as a qualifying circumstance.<sup>24</sup>

The accused-appellant, for his part, manifested that he would no longer file a supplemental brief and was instead adopting the brief he filed before the

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<sup>17</sup> Id. at 17-18.

<sup>18</sup> Id. at 19.

<sup>19</sup> Id. at 20.

<sup>20</sup> Id. at 22-23.

<sup>21</sup> Id. at 38-42.

<sup>22</sup> Id. at 38-40.

<sup>23</sup> Id. at 48-60.

<sup>24</sup> Id. at 52-59.

CA which had already exhaustively discussed all the issues relative to his defense.<sup>25</sup>

### Ruling of the Court

The appeal is *not meritorious*.

At the core of the accused-appellant's defense is that he accidentally shot the victim in self-defense. The accused who pleads self-defense admits the authorship of the crime. The burden is then shifted to him to prove self-defense by clear and convincing evidence.<sup>26</sup>

Self-defense is a justifying circumstance and exempts the accused from criminal liability, upon showing of the concurrence of the following circumstances: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) lack of sufficient provocation on the part of the person defending himself.<sup>27</sup>

To successfully invoke whether complete or incomplete self-defense, it is indispensable that unlawful aggression must be proven. Failure to do so, the two other elements would have no factual or legal basis to stand on.<sup>28</sup>

The test for the presence of unlawful aggression is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the threat must not be an imaginary threat. It requires for its existence the presence of three (3) elements, 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.<sup>29</sup>

Judging from the circumstances of this case, the accused-appellant was unable to prove the existence of unlawful aggression. Thus, his claim of self-defense must fail.

In unlawful aggression, there must be either an "attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury" or "an attack that is impending or at the point

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<sup>25</sup> Id. at 67-70.

<sup>26</sup> See *People v. Court of Appeals*, 405 Phil. 247, 260-261 (2001).

<sup>27</sup> REVISED PENAL CODE, Article 11(1).

<sup>28</sup> *People v. Dulin*, 762 Phil. 24, 39 (2015).

<sup>29</sup> *People v. Nugas*, 677 Phil. 168, 179 (2011).

of happening.”<sup>30</sup> In the latter case, it must not consist in a mere threatening attitude. The imminent attack must be offensive and positively strong.<sup>31</sup>

The accused-appellant averred that the victim pointed a gun at him and this was what led him to grapple for its possession. However, as observed by the RTC and the CA, accused-appellant’s version of events is hard to believe when evaluated in relation to the injury sustained by the victim.

Proceeding from the accused-appellant’s narration of what transpired, the Court adopts the observation of the RTC that his theory is dubious and improbable—

after the victim Ranie Lapidante had shouted, the latter violently struck the door of the house of Dale Duay thus the victim and his companions were able to open the door and the victim immediately approached the [accused-appellant] and at the same time drew his (victim) firearm but then the [accused-appellant] was able to get hold of the nozzle of the firearm unfortunately it fired and the victim was hit on the stomach.

x x x x

**Granting arguendo, the [accused-appellant] was able to hold on to the nozzle of the firearm during the grappling for the possession of the same when suddenly the firearm exploded and hit the victim which caused his death. If this is so, how then was it possible it was the victim who was hit and not the [accused-appellant]? It is of common knowledge that the bullet when fired from a gun exists at the nozzle and it is precisely at this particular end of the gun the [accused-appellant] was holding on. x x x The details of the testimony of the [accused-appellant] are so exasperatingly inadequate to prove that the [accused-appellant] while holding on to the nozzle of the gun the same was pointed to the victim and not to the [accused-appellant]. x x x It is also of common experience that a person holding the handle of a gun with a finger on its trigger could firmly hold the gun against someone holding its nozzle which by all accounts the latter could easily lose his grip and should the gun fire, the natural tendency would be, the one holding on to the nozzle will be hit by the bullet absent any clear and convincing evidence that the nozzle of the gun was pointed to the person holding its handle which obviously is the opposite end of the nozzle, as such, this Court finds the version of the accused highly improbable it being not accord with common experience and the natural order of things.<sup>32</sup> (Emphasis supplied)**

As the accused-appellant’s defense rests upon his bare allegation and self-serving claim and uncorroborated by independent evidence, it is clear that he is unable to meet the quantum of proof required.

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<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> CA rollo, pp. 38-39.

The prosecution offered an entirely different account from that offered by the defense. It claimed that upon the command of Duay, the accused-appellant shot the victim. The substantial conflict in the position of the parties makes the review on appeal difficult, inasmuch as they rest primarily upon the credibility of the testimonies of witnesses, which this Court did not have the opportunity to observe as they were given.

Reviewing tribunals are left to rely “on the cold and mute pages of the records, unlike the trial court which had the unique opportunity of observing first hand that elusive and incommunicable evidence of the witness’ deportment on the stand while testifying.”<sup>33</sup> In this situation, the trial court’s assessments of the credibility of witnesses is accorded great weight and respect on appeal and is binding on this Court, particularly when it has been affirmed by the CA. Such factual findings are not to be disturbed absent any showing that significant circumstances were overlooked or disregarded by which, if considered, might affect the outcome of the case.<sup>34</sup>

In this case, the Court sees no reason to depart from the uniform factual finding of the RTC and the CA that the shooting was not accidental, the conclusion being amply supported by the credible declarations of prosecution witnesses, corroborated by evidence of the injury which the victim sustained.

It is useful at this point to reiterate for emphasis that the *onus probandi* rests upon him who invokes self-defense to justify the killing of the victim. The burden of proof is shifted to the accused-appellant who must show by clear and convincing evidence that he performed the act in order to save his life. In so doing, he must rely on the strength of his own evidence and not on the weakness of the prosecution. “[H]aving admitted the killing, he has to justify the taking of the victim’s life by the standards of the law for such absolution.”<sup>35</sup> When the accused’s account rests solely upon his testimony, his plea of self-defense must fail. “Self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence or when it is extremely doubtful by itself.”<sup>36</sup> As such obtains in this case, conviction of the accused-appellant must stand.

With respect to qualifying circumstances, the Information alleged the killing to have been attended by evident premeditation and treachery. The RTC and the CA found only the latter to be present. The Court agrees.

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<sup>33</sup> Supra note 26 at 262-263.

<sup>34</sup> Id.

<sup>35</sup> *People v. Morin*, 311 Phil. 831, 838 (1995).

<sup>36</sup> *Belbis v. People*, 698 Phil. 706, 719 (2012).

Treachery or *alevosia*, is present when the offender adopts means, methods, or forms in the execution of the felony that ensure its commission without risk to himself arising from the defense which the offended party might make. Treachery is characterized by a deliberate, sudden, and unexpected assault from behind, without warning and without giving the victim a chance to defend himself or repel the assault and removing all risk to the assailant.<sup>37</sup>

Herein, there is no denying that while the attack is frontal, the victim was caught off-guard when the shot was fired. To recall, the victim with his companions were at the house of Duay waiting for coffee to be served when the accused-appellant suddenly appeared and, without warning, shot the victim. The sudden and unexpected attack on the unarmed victim rendered him defenseless and without any chance to avoid it.<sup>38</sup>

Homicide qualified by treachery is Murder, penalized under Article 248 of the RPC, as amended by Republic Act No. 7659, with *reclusion perpetua* to death. There being no other aggravating circumstance aside from treachery which already qualified the offense, the imposition of the penalty of *reclusion perpetua* must be affirmed in accordance with Articles 63 of the RPC. The award of damages, however, must be modified in light of the Court's ruling in *People v. Jugueta*.<sup>39</sup> The accused-appellant should be made to pay civil indemnity, moral damages, and exemplary damages, pegged at ₱75,000.00 each. In addition, the crime having resulted in the death of the victim, in the absence of documentary evidence of burial or funeral expenses presented in court, the amount of ₱50,000.00 as temperate damages shall be awarded.<sup>40</sup>

**WHEREFORE**, the appeal is hereby **DISMISSED**. The Decision dated February 10, 2011 issued by the Court of Appeals, Cebu City in CA-G.R. CR-HC No. 00371, finding accused-appellant Ernesto Montilla y Cariaga **GUILTY** beyond reasonable doubt of the crime of Murder and thereby ordering him to suffer the penalty of *reclusion perpetua* is hereby **AFFIRMED with MODIFICATION**. In that, the said accused-appellant is hereby **ORDERED to PAY** the heirs of Ranie Lapidante the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱50,000.00 as temperate damages. The accused-appellant shall also pay six percent (6%) interest *per annum* on all damages awarded from the finality of this Decision until fully paid.

<sup>37</sup> *People v. Raytos*, 810 Phil. 1007, 1025 (2017).

<sup>38</sup> See *People v. Racal*, 817 Phil. 665, 677-678 (2017).

<sup>39</sup> 783 Phil. 806 (2016).

<sup>40</sup> *Id.*

**SO ORDERED.**

  
**SAMUEL H. GAERLAN**  
Associate Justice

WE CONCUR:

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice

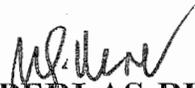
*(On official leave)*  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

  
**JAPAR B. DIMAAMPAO**  
Associate Justice

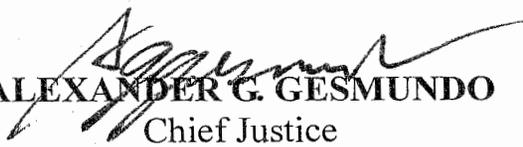
**ATTESTATION**

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.

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson, Second 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.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

