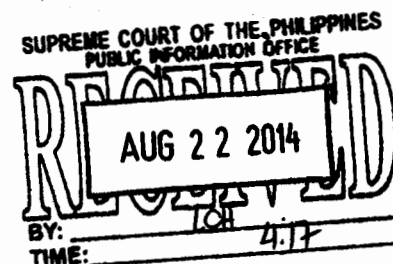




Republic of the Philippines
Supreme Court
Manila
FIRST DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 2, 2014 which reads as follows:

“G.R. No. 201722 (*People of the Philippines v. Olie Peña y Andal*). -
We resolve the appeal filed by accused Olie Peña y Andal (appellant) from the Decision of the Court of Appeals (CA) dated 29 November 2011, in CA-G.R. CR-H.C. No. 04165.¹

THE RTC RULING

In its Decision² promulgated on 16 September 2009, the Regional Trial Court (RTC) of Batangas City, Branch 3, convicted appellant of the crime of murder as defined and penalized under Article 248 of the Revised Penal Code. The RTC gave credence to the testimonies of eyewitnesses Rodolfo Reyes, Timoteo Guce and Julie Francisco, as well as the testimony of Dr. Antonio S. Vertido, who performed the autopsy on the cadaver of the victim, Leopoldo Ozaeta.

The trial court gave full faith and credence to the accounts of the three eyewitnesses that appellant entered the victim's house and fired seven shots, killing the latter. Appellant was thus sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay ₱50,000 as civil indemnity, ₱112,073.05 as actual damages, ₱50,000 as moral damages, as well as ₱25,000 as exemplary damages since the qualifying circumstance of treachery had been firmly established.³

¹ *Rollo*, pp. 2-19; Penned by associate Justice Normandie B. Pizzaro and concurred in by Associate Justices Rebecca De Guia-Salvador and Rodil V. Zalameda.

² *CA rollo*, pp. 29-41; Docketed as Criminal Case No. 14370, penned by Judge Ruben A. Galvez.

³ Citing *Ingal v. People*, G.R. No. 173282, 4 March 2008, 547 SCRA 63.

THE CA RULING

The CA affirmed the conviction on intermediate appellate review. It agreed with the RTC in rejecting appellant's claim of self-defense for lack of clear and convincing evidence. The appellate court held that the required element of unlawful aggression was absent because appellant failed to show a medical certificate or any proof that the victim had bludgeoned him with the gun and injured his forehead. In any case, the CA stated, the victim's act, though intimidating, did not pose imminent danger to the appellant's life that justified shooting the victim seven (7) times. The appellate court found nothing in the records that would lend credence to the appellant's version of the incident.⁴

The CA affirmed the trial court's Decision with the modification that the amount of exemplary damages was increased to ₱30,000.

We now rule on the final review of the case.

OUR RULING

We affirm the CA judgment with the modification that the amount representing civil indemnity is increased to ₱75,000.

Both parties have opted not to file separate Supplemental Briefs with this Court and to instead re-plead the same arguments they raised before the CA. After a careful review of the records, we agree with the RTC in rejecting the claim of self-defense proffered by appellant, especially after its ruling was affirmed by the CA. In stark contrast to his bare allegations, the testimonies of Reyes, Guce, Francisco, the medico legal officer, Dr. Vertido, as well as attending officers P02 Efrén Hernández Ong and SPO2 Luisito Marquez Limbo were direct and credible.

It must be stated at the outset that in invoking self-defense, appellant admits that he murdered the victim, Ozaeta. With this admission, the burden of evidence shifted to the appellant to prove that he had acted in accordance with the law.⁵ 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.⁶ 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.⁷

⁴ Rollo, p. 12.

⁵ *People v. Gonzales*, G.R. No. 195534, 13 June 2012, 672 SCRA 590.

⁶ *Cabuslay v. People*, 508 Phil. 236 (2005).

⁷ *People v. Camahalan*, G.R. No. 114032, 22 February 1995, 241 SCRA 558, 569.

In the instant case, appellant denies that Reyes, Guce, and Francisco were present during the incident. He also denies that he entered the victim's house to provoke the altercation. Appellant testified that he was merely passing by, when the victim, Ozaeta, invited him to the kitchen. When he confronted Ozaeta about the latter's alleged relationship with appellant's wife, Ozaeta purportedly retorted, "*Putang ina mo wala kang pakialam. Wala kang karapatan pagsabihan ako dahil ikaw ay nasa loob ng aking bakuran.*" Thereafter, Ozaeta pulled a gun from his waistband and bludgeoned appellant's forehead with it. Appellant was forced to grapple with Ozaeta for possession of the gun. Bloodied and groggy, appellant unintentionally pulled the trigger. He now claims that Ozaeta's acts constituted unlawful aggression, and that he was merely forced by circumstance to defend his life.

For the justifying circumstance of self-defense to be appreciated, the following elements must be proved: (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.⁸ In *People v. Nugas* and *People v. Fontanilla*, the element of unlawful aggression, as well as its requirements, has been explained as follows:

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.⁹ (Emphases supplied)

⁸ Revised Penal Code, Art. 11, par. 1.

⁹ *People v. Nugas*, G.R. No. 172606, 23 November 2011, 661 SCRA 159, 167-168, cited in *People v. Fontanilla*, 664 SCRA 150 (2012).

Appellant's version of the entire incident remains dubious. For Ozaeta's attack to constitute unlawful aggression, appellant should have at least presented corroborative evidence, such as a medical certificate, to confirm the injuries he sustained. Nothing remotely supportive was presented, save for his own self-serving claim that he was bludgeoned by Ozaeta. More importantly, three eyewitnesses uniformly testified *that it was appellant who had brought the unlicensed gun to the victim's house*, shot the victim in the face,¹⁰ and fired successive shots, at least five of which were evidenced by the empty shells recovered at the scene.¹¹ Thus, appellant failed to corroborate his claim of self-preservation, as there was no proof of actual, imminent danger or a "positively strong act of real aggression"¹² from the victim.

Appellant next contends that the court *a quo* gravely erred in not finding him guilty *only* of homicide.¹³ Simply put, he argues that the conviction for murder was erroneous because the prosecution failed to prove that treachery had attended the killing.

We disagree. There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to himself arising from any defense which the offended party might make.¹⁴ The elements of treachery are: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution was deliberate or consciously adopted. There is treachery even if the attack is frontal if it is sudden and unexpected, with the victims having no opportunity to repel it or defend themselves, for what is decisive in treachery is that the execution of the attack made self-defense or retaliation impossible.¹⁵

A review of the evidence on record establishes these elements.

As pointed out by the RTC and upheld by the CA, forensic findings revealed the following: 1) the victim received seven gunshot wounds, one of which was located in the face (as shown in the Autopsy Report); 2) a slug was recovered at the back of victim's head; 3) one was recovered from his abdomen, another was lodged in his back; 4) three of the slugs entered his forearm and both arms; 5) two entered both legs, from which the same slugs exited; 6) the first shot was fired while the shooter and victim faced each other, *and the rest were fired when the muzzle of the gun was pointed at the latter's back.*¹⁶

¹⁰ CA rollo, p.31.

¹¹ Id. at 32.

¹² Supra note 9.

¹³ CA rollo, pp. 71-84; Supplemental Brief for the Accused.

¹⁴ Revised Penal Code, Article 14, par. 16, as amended.

¹⁵ *People v. Badriago*, G.R. No. 183566, May 8, 2009, 587 SCRA 820, 833.

¹⁶ Rollo, p. 7.

We therefore reject appellant's contention that treachery was not present and rule that the crime cannot be downgraded from murder to homicide. Appellant's manner of attack ensured that the victim was not afforded any opportunity to defend himself. The fatal gunshot wound, located in the abdominal wall, showed that appellant fired his second shot after the victim had fallen down from the first shot to the face. There was clear intent to kill, as evidenced by five more successive shots directed at different part of the victim's body.

With respect to the award of damages, however, we increase the amount of civil indemnity to ₱75,000 in line with prevailing jurisprudence.¹⁷ We are not unaware that in other cases¹⁸ similarly involving murder, in which the imposable penalty was only *reclusion perpetua* because of the absence of any additional aggravating circumstance, the Court saw fit to award only the amount of ₱50,000 as civil indemnity. The Court will therefore have to address this inconsistency to come up with a uniform amount of civil indemnity to be awarded in like cases.

Interest at the rate of six percent (6%) per annum must also be imposed on all damages awarded from the date of finality of this judgment until fully paid.¹⁹

WHEREFORE, the Court of Appeals Decision dated 29 November 2011 in CAG.R. CR-HC No. 04165 is hereby **AFFIRMED**, with the **MODIFICATION** that the amount representing civil indemnity is increased to ₱75,000. Interest at the rate of six percent (6%) per annum shall be applied to the award of civil indemnity, moral damages, and exemplary damages from the finality of judgment until fully paid.²⁰

SO ORDERED."

Very truly yours,



EDGAR O. ARICHETA

Division Clerk of Court

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¹⁷ *People v. Malicdem*, G.R. No. 184601, 12 November 2012, 685 SCRA 193 (citing *People v. Anticamaru*, G.R. No. 178771, 8 June 2011, 651 SCRA 489); *People v. Laurio*, G.R. No. 182523, 13 September 2012, 680 SCRA 560.

¹⁸ *People v. Dejillo*, G.R. No. 185005, 10 December 2012, 687 SCRA 537; *People v. Pondivida*, G.R. No. 188969, 27 February 2013; *People v. Peteluna*, G.R. No. 187048, 23 January 2013, 689 SCRA 190.

¹⁹ *People v. Gabrino*, G.R. No. 189981, 9 March 2011, 645 SCRA 187.

²⁰ *People v. Combate*, G.R. No. 189301, 15 December 2010, 638 SCRA 797.

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The Hon. Presiding Judge
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