

FIRST DIVISION

G.R. No. 210975 — PO1 APOLINARIO BAYLE y JUNIO, *petitioner*,
versus PEOPLE OF THE PHILIPPINES, *respondent*.

Promulgated: MAR 11 2020



X-----X

CONCURRING OPINION

CAGUIOA, J.:

I concur with the *ponencia* that the accused-petitioner PO1 Apolinario Bayle (Apolinario) should be acquitted of the crimes of Homicide and Frustrated Homicide. The *ponencia* correctly ruled that the defense was able to establish the existence of the justifying circumstances of self-defense and defense of a relative.

Brief review of the facts

On September 20, 2004, there was a party at the compound owned by the Lampas, which was located in front of the apartment of Apolinario. There were also men having a drinking spree inside the Lampa compound.

Meanwhile, Apolinario and his wife, PO2 Jessica T. Bayle (Jessica) were chatting and laughing with their friends inside their apartment while waiting for Jessica's brother, Christopher Tupas (Christopher) when Lorico R. Lampa (Lorico) shouted from outside of their apartment uttering the following: "*mga walang hiya kayo, ang yayabang ninyo, kabagobago pa lang ninyo dito ang iingay ninyo, pagpapatayin ko kaya kayo diyan.*"¹ Apolinario retorted with a curse. Jessica then tried to pacify her husband. A few minutes later, someone shouted again and hurled curses. Jessica then opened the door and told the man who was shouting, "*pasensya na po, bukas na lang natin pag-usapan kung ano man yan.*"² As Jessica was about to close the door, the door swung open causing her to fall down with her nose hitting the floor. Then, Crisanto L. Lozano (Crisanto) and Allan Lampa (Allan), both armed with bladed weapons, entered the house. Crisanto attacked Jessica, but Apolinario jumped over Crisanto, while Allan attacked Benjamin Reinedo (Benjamin) and Loreto Flores (Loreto). Crisanto and Apolinario wrestled with each other. However, Apolinario was able to successfully free himself from Crisanto and even disarmed him. Apolinario then proceeded to their bedroom to get his gun. Crisanto tried to follow Apolinario, but Jessica grabbed and took hold of Crisanto's leg. At that moment, Apolinario came out of their room and saw Crisanto strangling his wife. Thus, Apolinario shot Crisanto to prevent further danger to the lives of his pregnant wife and unborn child. After getting shot, Crisanto fled. Apolinario tried to stop him, but Crisanto was able to jump out of the door, going out of the house and running past Loreto.

¹ *Rollo*, p. 87.

² *Id.*



Apolinario then tried to help Jessica, but before she could even stand up, Lorico, armed with a knife, came running towards them, shouting and with eyes blazing. Apolinario shouted, “*tigil pulis ako*,”³ but Lorico did not stop, prompting Apolinario to shoot him. Jessica recounted that Lorico was shot when the latter was one step away from the door, while Apolinario recalled that he shot Lorico when the latter was already two arm’s length from them. After being hit, Lorico fell down from the stairs.

The Regional Trial Court (RTC) and Court of Appeals (CA) found Apolinario guilty beyond reasonable doubt of the crimes of Homicide and Frustrated Homicide. The RTC and CA held that the defense was not able to prove the elements of self-defense and defense of a relative.

The *ponencia* now rules that Apolinario should be acquitted of the crimes charged.

I concur with the *ponencia*.

All the elements of the justifying circumstance of defense of a relative were proven by the defense in the shooting of Crisanto.

For defense of a relative to prosper, the following requisites must concur, namely: (1) unlawful aggression by the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) in case the provocation was given by the person attacked, that the person making the defense took no part in the provocation.⁴

I agree with the *ponencia* that all of the abovementioned requisites for defense of a relative were present in the shooting of Crisanto by Apolinario.

First, there was unlawful aggression by the victim, Crisanto. Unlawful aggression is equivalent to assault or at least threatened assault of an immediate and imminent kind.⁵ There is unlawful aggression when the peril to one’s life, limb or right is either actual or imminent. There must be actual physical force or actual use of weapon.⁶ In the instant case, it cannot be denied that Crisanto’s act of strangling Jessica is an actual physical assault that posed a clear and imminent danger to the life of Jessica and her unborn child.

Second, the question as to the “reasonable necessity” for the use of the means employed is one of the facts to be determined in accordance with the particular facts proven in each case.⁷ Although Apolinario used a gun, while Crisanto was unarmed, looking into the totality of the situation, I agree with

³ Id. at 89.

⁴ *Medina, Jr. v. People*, 724 Phil. 226, 237 (2014).

⁵ *People v. Alconga and Bracamonte*, 78 Phil. 366, 374 (1947).

⁶ *People v. Crisostomo*, 195 Phil. 162, 172 (1982).

⁷ *United States v. Mack*, 8 Phil. 701, 710 (1907).

the *ponencia* that the means employed by Apolinario to repel Crisanto's attack was reasonably necessary. That Apolinario used his service pistol while Crisanto was unarmed at the time Apolinario shot the latter is of no consequence.

In *People v. Encomienda*,⁸ the Court held:

x x x "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 as 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 x x x"⁹

In addition, the ancient common law rule in homicide was denominated "*retreat to the wall*." This doctrine makes it the duty of a person assailed to retreat as far as he can before he is justified in meeting force with force. However, this principle has now given way in the United States to the "*stand ground when in the right*" rule.¹⁰ This rule was further explained in *Erwin v. State*:¹¹

"The defendant was where he had the right to be, when the deceased advanced upon him in a threatening manner, and with a deadly weapon; and if the accused did not provoke the assault and had at the time reasonable grounds to believe and in good faith believed, that the deceased intended to take his life or do him great bodily harm, he was not obliged to retreat, nor consider whether he could safely retreat, **but was entitled to stand his ground and meet any attack made upon him with a deadly weapon, in such way and with such force as, under all the circumstances, he, at the moment, honestly believed, and had reasonable grounds to believe, was necessary to save his own life or to protect himself from great bodily injury.**"¹² (Emphasis supplied)

Thus, the trial court's ruling that Apolinario could have carefully deliberated on what action to take due to the fact that Crisanto's attention was momentarily shifted to Jessica is quite absurd.¹³ Apolinario was clearly in the right when he used his service gun to shoot Crisanto. Given that Apolinario's pregnant wife was being strangled to death and the only weapon Apolinario had within his reach and in his possession was his service gun, the reasonable and natural thing for him to do under the circumstances was to fire at Crisanto, and thus make sure that his wife and unborn baby were kept safe. In predicaments like this, human nature does not act upon the processes of formal reason, but in obedience to the instinct of self-preservation. When it is

⁸ 150-B Phil. 419 (1972).

⁹ Id. at 433-434.

¹⁰ *United States v. Domen*, 37 Phil. 57, 59 (1917).

¹¹ 29 Ohio St., 186 (1876) cited in id. at 59-60.

¹² *United States v. Domen*, id. at 60.

¹³ *Ponencia*, p. 17.

apparent that a person has reasonably acted upon this instinct, it is the duty of the courts to sanction that act or to mitigate his liability.¹⁴

All the elements of the justifying circumstances of self-defense and defense of a relative were proven by the defense in the killing of Lorico.

I likewise agree with the *ponencia* that the defense was able to prove all the elements of self-defense and defense of a relative as to the killing of Lorico by Apolinario.

Article 11 (1) of the Revised Penal Code provides the elements of self-defense as a justifying circumstance, thus: 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.

It cannot be disputed that there was unlawful aggression when Lorico, armed with a knife, ran towards Jessica and Apolinario. There was a real and imminent danger to the life and limb of Jessica and Apolinario. The determination of Lorico to harm Apolinario and Jessica is bolstered by the fact that although Apolinario shouted, “*tigil pulis ako*,” Lorico simply ignored him and continued charging towards them. Thus, Apolinario was cornered into a position wherein he had no other choice but to shoot Lorico.

The second element of self-defense and defense of a relative is also present. The trial court insists that Apolinario could have repelled the attack of Lorico in a manner that would not have caused the latter’s life, such as by disabling the latter by shooting his arm or leg.¹⁵

However, this theory is hardly acceptable. As stressed by the *ponencia*, at the time that Lorico rushed towards Apolinario and his wife, Apolinario was helping Jessica stand up from the floor after just having been attacked by Crisanto. Thus, Apolinario and Jessica were not in the position to defend themselves. Given that Lorico was rushing towards Apolinario and his wife and the chaotic situation they were in, Apolinario could not have been expected to still reflect coolly as to which part of the body of Lorico to shoot. In this relation, the Court, in a number of cases, has held that the person defending is not expected to control his blow.

In *United States v. Mojica*,¹⁶ the Court ruled:

¹⁴ *People v. Samson*, 768 Phil. 487, 500 (2015).

¹⁵ *Ponencia*, p. 11.

¹⁶ 42 Phil. 784 (1922).



x x x And if it was necessary for the appellant to use his revolver, he could hardly, under the circumstances, be expected to take deliberate and careful aim so as to strike a point less vulnerable than the body of his adversary.¹⁷

Similarly, in *United States v. Macasaet*,¹⁸ the Court held:

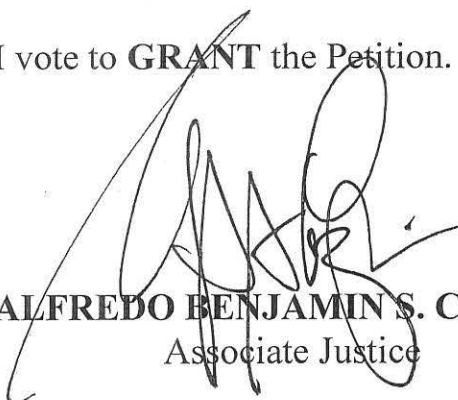
“The fact that the accused struck one more blow than once was absolutely necessary to save his own life, or that he failed to hold his hand so as to avoid inflicting a fatal wound where a less severe stroke might have served the purpose, would not negative self-defense, because the accused, in the heat of an encounter at close quarters, was not in a position to reflect coolly or to wait after each blow to determine the effects thereof.”¹⁹

Thus, Apolinario cannot be faulted for inflicting a mortal wound on Lorico.

The last element of self-defense and defense of a relative was also sufficiently proven by the defense. Although Apolinario cursed back at Lorico, this is not the sufficient provocation that is contemplated by law. The provocation, in the language of the law, must be “sufficient,” that is, it should be proportionate to the act of aggression and adequate to stir the aggressor to its commission.²⁰ In the present case, it can hardly be said that the shouting of expletives by Apolinario at Lorico constitute a sufficient cause for the latter to attack Apolinario and his wife.

Since the defense was able to prove all the elements of self-defense and defense of a relative, the shooting by Apolinario of Crisanto and the killing of Lorico is justified. Thus, Apolinario must perforce be acquitted of the crimes charged.

Based on these premises, I vote to **GRANT** the Petition.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

¹⁷ Id. at 787, citing *United States v. Mack*, supra note 7; *United States v. Doman*, supra note 10.

¹⁸ 35 Phil. 226 (1916) cited in Luis B. Reyes, *THE REVISED PENAL CODE*, Book One, Art. 11, 187 (18th ed., 2012).

¹⁹ Id.

²⁰ *People v. Alconga and Bracamonte*, supra note 5, at 373.