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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. Nos. L-36405-06. September 2, 1985]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **TEODULO CALICDAN, ARTEMIO ORTIZ and FELIPE PERALTA *alias* "EPING,"** *defendants-appellants.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; UNLAWFUL AGGRESSION; WHERE THERE IS NO UNLAWFUL AGGRESSION, THERE IS NOTHING TO PREVENT OR REPEL.— Having admitted responsibility for the injuries sustained by the victims, the appellant, in order to avoid criminal liability, must establish his theory of self-defense by clear, satisfactory and convincing evidence. The primordial requisite of self-defense is unlawful aggression on the part of the person killed or injured. And for unlawful aggression to be present there must be real danger to the life or personal safety of the appellant; and where there is no unlawful aggression, there is nothing to prevent or repel. As this Court held in *People v. Yuman*: "The act of mortally wounding the victim has not been preceded by aggression on the part of the latter. There is no occasion to speak of 'reasonable necessity of the means employed' or of 'sufficient provocation' on the part of one invoking legitimate self-defense, because both circumstances presuppose unlawful aggression which was not present in the instant case."

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2. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; STATEMENT OF THE BARRIO CAPTAIN GIVEN SPONTANEOUSLY AFTER THE SHOOTING INCIDENT IS ADMISSIBLE AS PART OF *RES GESTAE*.— With respect to the shooting of Rizalino Caoile, the appellant claimed that he shot him in order to defend himself, because Caoile, in a threatening attitude, was in the act of drawing a gun from his right back pocket. This contention is untenable when it is considered that the victim was not armed with any deadly weapon at the time of the incident. Thus, in a sworn statement given to the police shortly after the shooting, Artemio Ortiz, barrio captain and co-accused of the appellant, categorically declared that neither Jose Sabado or Rizalino Caoile was armed with a gun or any weapon. The above statement of barrio captain Artemio Ortiz given spontaneously shortly after the shooting incident, is admissible as part of the *res gestae*.

3. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; UNLAWFUL AGGRESSION; SAME MUST BE ACTUAL, PHYSICAL ASSAULT OR AT LEAST A THREATENING ATTITUDE WHICH MUST BE OF A REAL AND IMMINENT DANGER.— Unlawful aggression can be invoked only if there is an actual, physical assault or at least a threatened assault which must be of a real and imminent character. In the case at bar, the appellant merely imagined a possible aggression from a totally unarmed person. Neither could the mere threatening or intimidating attitude displayed by the deceased justify the appellant's act. For a threat to constitute unlawful aggression, it is required that the same be offensive and positively strong, to show the wrongful intent of the aggressor to cause an injury.

4. REMEDIAL LAW; EVIDENCE; OFFER OF COMPROMISE, AN IMPLIED ADMISSION OF GUILT.— Advertence should be made of the fact that appellant Calicdan had offered to settle both criminal cases for the amount of ₱12.000.00. In fact, Rizalino Caoile and Sixto Sabado, the father of the deceased Jose, had received the sum of ₱500.00 as advance payment. Such offer of compromise made by the accused is admissible against him as an implied admission of guilt.

5. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; NOT APPRECIATED WHERE THERE IS NO

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INDICATION THAT THE SHOOTING OF THE VICTIMS WAS DONE IN A MANNER THAT WOULD HAVE PREVENTED THE VICTIMS FROM DEFENDING THEMSELVES.— For the circumstance of treachery to be considered against the appellant, the prosecution must establish that the appellant had deliberately employed means or method to ensure the execution of the crime without risk to himself. It is not enough to show that the victim was not able to defend himself; it must be shown that appellant consciously adopted such means or method as would ensure that the victim would not be able to put up any defense. In the case at bar, there is not the least indication that the shooting of the victim was done by Calicdan in a manner that would have prevented them from defending themselves. And with respect to Cecilia Sabado, it is undisputed that she was hit by stray bullets directed at Rizalino Caoile, the intended victim.

6. ID.; ID.; EVIDENT PREMEDITATION; CANNOT BE CONSIDERED IN THE ABSENCE OF PROOF THAT THE SHOOTING WAS THE RESULT OF DELIBERATE THOUGHT AND REFLECTION ON THE PART OF THE APPELLANT.— Neither is the circumstance of evident premeditation present in the instant case. No proof has been adduced to show that appellant has previously planned to kill Jose and Cecilia Sabado or to injure complainant Rizalino Caoile, or that the shooting was the result of deliberate thought and reflection on the part of the appellant.

D E C I S I O N

ESCOLIN, *J.*:

Appeal from the decision of the defunct Circuit Criminal Court of Dagupan City finding Teodulo Calicdan guilty beyond reasonable doubt of two separate crimes of [1] murder and [2] murder with frustrated murder. The dispositive portion of the decision reads:

"From the foregoing considerations, the Court hereby finds and so holds the accused GUILTY beyond reasonable doubt of the two crimes of murder for the death of Jose Sabado, in Criminal Case No. CCC-III-0136-PANGASINAN, and murder with frustrated murder for the death of Cecilia Sabado and the wounding of Rizalino, in Criminal Case No. CCC-III-0137-PANGASINAN, described in the two separate

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informations, both with the qualifying circumstances of treachery, defined and penalized respectively, under the provisions of Article 248, and Article 248, in relation to Article 6 and 48, of the Revised Penal Code, and taking into account the aggravating circumstance of evident premeditation, which, however, is off-set by the mitigating circumstance of voluntary surrender, hereby sentences said Teodulo Calicdan to serve prison terms of TWO (2) life imprisonment, with the accessories of the law, to indemnify the heirs of the deceased Jose Sabado and Cecilia Sabado in the sum of TWELVE THOUSAND (₱12,000.00) PESOS for each of them, and victim Rizalino Caoile in the sum of SIX THOUSAND (₱6,000.00) PESOS, and to pay the costs of the proceedings.

x x x x x x x x x"

In Criminal Case No. CCC-III-0136, appellant Calicdan together with his co-accused Artemio Ortiz and Felipe Peralta were charged with murder allegedly committed as follows:

"That on or about the evening of March 21, 1972, at the barrio of Lecsi, municipality of Manaoag, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused conspiring and mutually helping one another, armed with guns with intent to kill, evident premeditation and treachery, did then and there, wilfully, unlawfully, and feloniously shoot JOSE SABADO who died as a result thereof as per medical certificate hereto attached as Annex "A"."

The information in Criminal Case No. CCC-III-0137 charged Calicdan, Ortiz and Peralta with the crime of murder with frustrated murder as follows:

"That on or about March 21, 1972 in the barrio of Lecsi, municipality of Manaoag, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, and mutually helping one another, armed with guns, with intent to kill, evident premeditation, and treachery, did, then and there, wilfully, unlawfully and feloniously shoot one Rizalino Caoile and his mother-in-law, Cecilia T. Sabado, thereby causing the death of the latter, as per medical certificate hereto attached, marked as Annex "A" and, with respect to the former, Rizalino Caoile, received, per medical certificate hereto attached, marked as Annex "B", the following:

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1. Gunshot wound, multiple, penetrating perforating diaphram lower lobe (L) lung with massive hemorrhage & fracture 9th, 10th & 11th rib (L) posterior.

all acts necessary for the execution producing murder as a consequence have been performed, but which, nevertheless, did not produce it by reason of causes independent of the will of the perpetrators that is the timely medical attendance he received which prevented his death."

Felipe Peralta was never brought to trial as he had managed to remain at large during the entire proceedings *a quo*. In fact, he has not been apprehended until the present time.

At the arraignment, appellant Calicdan offered to plead guilty to the lesser offenses of homicide and homicide with frustrated homicide, but the court denied the offer upon vehement objection of the prosecution. A joint trial of the two cases against Calicdan and Ortiz was thereafter conducted; and upon conclusion of the prosecution's evidence, Ortiz moved to dismiss the informations against him on ground of insufficiency of evidence. Acting on the motion, which was not opposed by the prosecution, the court dismissed the charges against Ortiz. Hence, the trial proceeded as against appellant Calicdan only.

The People's evidence, culled from the composite testimonies of eye-witnesses Rizalino Caoile, Felipe Aquino and Federico Villamil, established the following facts: In the evening of March 21, 1972, the victim, Jose Sabado, and four other young men were at the terrace of the house of Felisa Aquino at Barrio Lecsi, Manaoag, Pangasinan. At about 7:00 that night, Teodulo Calicdan, a neighbor of Felisa, arrived. Calicdan immediately pulled out his gun, proceeded toward Jose and his companions and asked if they were the ones who threw stones at his (Calicdan's) house. Upon receiving a negative answer, Calicdan left. But shortly after, he returned to Felisa's house, accompanied by Felipe Peralta. Calicdan and Peralta strode toward Jose, held him firmly and tried to pull him out of the house. Felisa and her daughter however prevented them from accomplishing their purpose, as the two women pushed the intruders aside and ordered them to get out, which they did.

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Shortly after 9:00 that night, Calicdan, Ortiz and Peralta went to the store of Rizalino Caoile located across the street from the house of Felisa Aquino. Caoile testified that they were armed: Calicdan was carrying a long shotgun; Ortiz, a caliber .22 rifle converted into a pistol; and Peralta, a pistol. Ortiz, who was the barrio captain of Lecsi, engaged Caoile in a conversation. While they were conversing, Jose Sabado came out of the house of Felisa and proceeded towards the store. And when Jose was about two meters away from Calicdan, the latter suddenly fired his shotgun at him. As Jose fell down, Calicdan turned on Caoile and shot the latter. That second blast also hit Cecilia Sabado, the mother of Jose, who was standing behind Caoile.

After Caoile and Cecilia had fallen, Calicdan and his companions left the scene of the crime. The victims were immediately brought to the Provincial Hospital at Dagupan City. Jose Sabado died shortly after arrival at the hospital due to massive internal hemorrhage. According to Dr. Arturo de Vera, the deceased sustained the following wounds:[1]

"*EXTERNAL PHYSICAL INJURIES:*

1. Gunshot wound oval in shape about 1 inch 1 diameter with contusion collar at the rt. Hypochondriac region with prolapse omentum.
2. Nine (9) exit wounds about 1-2 cm. in length oblong in shape located at the left side of the abdomen.

INTERNAL PHYSICAL INJURIES:

1. Multiple laceration of the liver, thru & thru perforation of the transverse and descending colon with facal spillage and massive internal hemorrhages."

Cecilia Sabado was dead on arrival at the same hospital with the following injuries:

"*EXTERNAL PHYSICAL INJURIES:*

Gunshot wound with entrance wound about 2 cm. in diameter oval in shape at the upper 3rd arm (L), lateral aspect penetrating thru &

[1] Exh. "B" or Exh. "3-Calicdan".

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thru with complete fracture of the upper 3rd humerus (L), with exit wound about 2 cm. in length medial aspect, traversing the chest with re-entrance wound on same level at the region of the 4th rib, fracturing it at the antero-lateral aspect of the chest (L). No re-exit wound.

INTERNAL INJURIES:

1. Fracture, complete upper 3rd humerus, left.
2. Fracture, complete, 4th rib antero lateral aspect of the chest.
3. Punctured wound middle lobe, lung, left, thru & thru.
4. Punctured wound left ventricle, heart, thru & thru.
5. Slug found in the rt. hemothorax.
6. Massive internal hemorrhage."[2]

Rizalino Caoile, however, survived his injuries which Dr. Arturo de Vera described as a "gunshot wound, multiple, penetrating, perforating diaphram, lower lobe left lung, with massive hemorrhage and fracture of 9th, 10th and 11th rib left posterior."[3]

At the trial, appellant Calicdan readily admitted that he shot Jose Sabado and Rizalino Caoile. He could not recall, however, where the deceased Cecilia Sabado was standing at the time of the shooting. The appellant sought to justify his actions by advancing that he acted in legitimate self-defense. The evidence adduced in support of his defense is summarized by the trial court thus:

"The defense evidence, culled from the declarations of Damian de la Cruz, Artemio Ortiz, Antonio Diñoso, and the accused, tends to project that at 7:00 o'clock in the evening of March 21, 1972 after supper, Teodulo Calicdan was inside his house viewing on his television. Noticing the throwing of stones to the house of Rudy Soriano nearby, he looked out of the window, saw down below the deceased Jose Sabado, Eding Villamil, and Pepe Villamil still throwing stones, and shouted at the trio to stop. The deceased Jose shouted back saying, "Don't shout there; otherwise, I will throw grenade at your house." Feeling insulted, Teodulo went down. The trio ran towards the house of Felisa Sabado nearby.

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[2] Exh. "D" or Exh. "4-Calicdan".

[3] Exh. "A" to "A-1".

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"On the road in front of his house, Teodulo sighted Pempe Paraypayan, whom he asked to call for barrio captain Artemio Ortiz in barrio Tebuel to conduct the investigation of the stoning incident.

"Teodulo briefed Artemio upon the latter's arrival. Forthwith, Artemio proceeded to the store of Rizalino, found him there, and together they talked about Jose.

"By this time Teodulo had gone up his house. But the roof of his house was successively stoned. He went downstairs, out to the road, and saw Artemio and Rizalino still in front of the store engaged in conversation. Suddenly from the dark side of the yard of Felisa darted out Jose, grabbed his shotgun, and together they grappled for its possession for some two minutes in a see-saw manner, then the gun fired. Jose fell. Thereupon, Rizalino came forward, his left hand stretched forward and pointed at him and the right hand at the back as if to draw his gun. Teodulo lost no time; he fired his gun for the second time, wounded Rizalino but did not notice where Cecilia Sabado was.

"Thereafter, he proceeded to the house of barrio captain Antonio Tiñoso of Pental. Leaving his gun with a neighbor, he and Tiñoso surrendered to the police in town.

"Before municipal judge Andrada of Manaoag, Teodulo affirmed the contents of his affidavit on March 28, 1972 which he gave earlier to the police. (Exhibit N, also Exhibit 9-Calicdan)."

Having admitted responsibility for the injuries sustained by the victims, the appellant, in order to avoid criminal liability, must establish his theory of self-defense by clear, satisfactory and convincing evidence.

The primordial requisite of self-defense is unlawful aggression on the part of the person killed or injured. And for unlawful aggression to be present there must be real danger to the life or personal safety of the appellant; and where there is no unlawful aggression, there is nothing to prevent or repel. As this Court held in *People v. Yuman*:[4]

"The act of mortally wounding the victim has not been preceded by aggression on the part of the latter. There is no occasion to speak

[4] 61 Phil. 786.

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of 'reasonable necessity of the means employed' or of 'sufficient provocation' on the part of one invoking legitimate self-defense, because both circumstances presuppose unlawful aggression which was not present in the instant case."

Appellant testified that while he and his companions were at the store of Caoile, Jose Sabado suddenly darted from the dark side of Felisa Aquino's yard and immediately tried to wrest away the shotgun held by him (appellant); that as they grappled for the possession of the gun it exploded at the very moment its barrel was pointed at Jose's abdomen; that whereupon, the latter fell, mortally wounded.

Appellant lays considerable emphasis on the alleged powder burns on the periphery of the wounds sustained by Jose as well as the presence of pieces of cartridge cartons inside the victim's wound. These proofs, according to appellant, justify the inference that the victim Jose Sabado was hit at close range, *i.e.*, during their struggle for the possession of the gun. We agree with the Solicitor General that the argument is neither convincing nor satisfactory. In the first place, the necropsy report[5] prepared by Dr. Arturo de Vera, who conducted the autopsy of the deceased, makes no mention whatsoever of the alleged presence of any powder burns on the victim's wound or on any part of his body. Secondly, the entry of cartridge cartons into the entrance wound does not necessarily mean that the shotgun was fired at close range, because such cartridge cartons fired at a distance of about four [4] yards from a full-choked barrel of a fairly large bore gun, such as the one used by the appellant, could still have penetrated the victim's wounds.[6]

It is further noted that in the written statement which appellant gave to the Manaoag police on the day after the incident,[7] there was no mention at all of the alleged attempt by the victim to wrest away the appellant's shotgun.

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[5] Exhibit "B" or "3-Calicdan".

[6] *Medical Jurisprudence*, Alfred W. Herzog, p. 244.

[7] Exhibit "K".

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With respect to the shooting of Rizalino Caoile, the appellant claimed that he shot him in order to defend himself, because Caoile, in a threatening attitude, was in the act of drawing a gun from his right back pocket. This contention is untenable when it is considered that the victim was not armed with any deadly weapon at the time of the incident. Thus, in a sworn statement given to the police shortly after the shooting, Artemio Ortiz, barrio captain and co-accused of the appellant, categorically declared that neither Jose Sabado nor Rizalino Caoile was armed with a gun or any weapon.

"Q How about Rudy Caoile, were they armed?

"A I did not see any weapon or gun in the possession of Jose Sabado or Rizalino Caoile, all that I saw is that Jose Sabado was holding a stone."[8]

The above statement of barrio captain Artemio Ortiz given spontaneously shortly after the shooting incident, is admissible as part of the *res gestae*.

Unlawful aggression can be invoked only if there is an actual, physical assault or at least a threatened assault which must be of a real and imminent character.[9] In the case at bar, the appellant merely imagined a possible aggression from a totally unarmed person. Neither could the mere threatening or intimidating attitude displayed by the deceased justify the appellant's act. For a threat to constitute unlawful aggression, it is required that the same be offensive and positively strong, to show the wrongful intent of the aggressor to cause an injury.[10]

Advertence should be made of the fact that appellant Calicdan had offered to settle both criminal cases for the amount of ₱12,000.00. In fact, Rizalino Caoile and Sixto Sabado, the father of the deceased Jose, had received the sum of ₱500.00 as

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[8] p. 187, Orig. Record No. 2.

[9] *People v. Alconga*, 78 Phil. 366.

[10] *US v. Guy-Sayco*, 13 Phil. 292.

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advance payment.[11] This transaction was testified to by Artemio Ortiz:

"Q - You said you witnessed many transactions as barrio captain. Whose transaction is that?

x x x x x x x x x

A - It was the transaction regarding the money given by the wife of the accused to me and in turn I gave it to Sixto Sabado in the presence of the two and signed by my barrio councilmen.

Q - What is that money?

A - This money is for the settlement of the case.

Q - What case?

A - Regarding the shooting by Calicdan of his son-in-law and his son Jose Sabado.

x x x x x x x x x

Q - But you can assure the court that the amount of ₱500.00 was in consideration of the settlement of the case?

A - According to what Sixto Sabado was telling, and that of Lydia (wife of the accused).

x x x x x x x x x

Q - Where was the actual delivery made?

A - In the house of the barrio treasurer.

Q - Did you see Calicdan before you actually delivered this amount to Sixto Sabado?

A - Yes, sir.

Q - Did you talk to him?

A - Yes, sir.

Q - Where?

A - In the municipal jail.

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[11] TSN. Nov. 8, 1972. pp. 104-110.

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Q - Did you go to the jail just to inquire about ₱500.00 to be given to Sixto Sabado?

A - Yes, sir.

Q - And what did he tell you?

A - He told me that was their understanding."[12]

Such offer of compromise made by the accused is admissible against him as an implied admission of guilt.[13]

But while we are convinced that the appellant is criminally liable for the death of Jose and Cecilia Sabado, and for the injuries inflicted on Rizalino Caoile, we cannot agree with the trial court's conclusion that the shooting of the victims was attended by treachery and evident premeditation.

For the circumstance of treachery to be considered against the appellant, the prosecution must establish that the appellant had deliberately employed means or method to ensure the execution of the crime without risk to himself. It is not enough to show that the victim was not able to defend himself; it must be shown that appellant consciously adopted such means or method as would ensure that the victim would not be able to put up any defense. In the case at bar, there is not the least indication that the shooting of the victim was done by Calicdan in a manner that would have prevented them from defending themselves. And with respect to Cecilia Sabado, it is undisputed that she was hit by stray bullets directed at Rizalino Caoile, the intended victim.

Neither is the circumstance of evident premeditation present in the instant case. No proof has been adduced to show that appellant had previously planned to kill Jose and Cecilia Sabado or to injure complainant Rizalino Caoile, or that the shooting was the result of deliberate thought and reflection on the part of the appellant.

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[12] TSN, Nov. 23, 1972, pp. 287-290.

[13] Sec. 24, Rule 130, Rules of Court.

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Upon the foregoing premises, appellant Teodulo Calicdan is hereby pronounced guilty in Criminal Case No. CCC-III-0136 of the crime of homicide, and in Criminal Case No. CCC-III-0137 of homicide with frustrated homicide; and appreciating the circumstance of voluntary surrender without any aggravating circumstance to offset the same, appellant is hereby sentenced in Criminal Case No. CCC-III-0136 to an indeterminate penalty ranging from six (6) years and one (1) day of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal*, as maximum; and in Criminal Case No. CCC-III-0137, from ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum. He is further ordered to indemnify [a] the heirs of the late Jose Sabado in the sum of ₱30,000.00, [b] the heirs of the late Cecilia Sabado in the sum of ₱30,000.00, and [c] complainant Rizalino Caoile in the sum of ₱12,000.00; and to pay the costs.

SO ORDERED.

Concepcion Jr. (Acting Chairman), Cuevas, Alampay, and *Patajo, JJ.*, concur.

Aquino (Chairman) and *Abad Santos, JJ.*, on leave.

SECOND DIVISION

[G.R. No. L-49402. September 2, 1985]

EUSEBIO L. GABISAN, *petitioner, vs.* **MARIA CRISTINA FERTILIZER CORPORATION,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; PRIOR CLEARANCE TO TERMINATE; ADVANCE NOTICE OF DISMISSAL SUBSTANTIALLY COMPLIED WITH WHERE EMPLOYEE WAS SUFFICIENTLY