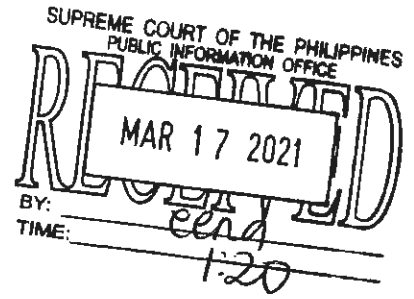




Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **September 2, 2020**, which reads as follows:

“G.R. No. 239337– (PEOPLE OF THE PHILIPPINES, plaintiff-appellee v. SANTIAGO AGRABA, JR., accused-appellant). – On appeal is the February 19, 2018 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02147, affirming with modification the May 28, 2015 Decision of the Regional Trial Court of Abuyog, Leyte, Branch 10 (RTC), finding accused-appellant Santiago Agraba, Jr. (Agraba) guilty beyond reasonable doubt of murder and attempted murder in Criminal Case Nos. 2892 and 2893.

The Facts

This case stemmed from two separate Informations² filed before the RTC charging Agraba with attempted murder and murder, the accusatory portion of which states:

Crim. Case No. 2893

That on or about the 4th day of October, 2009, in the Municipality of La Paz, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above[-]named accused, with intent to kill and with treachery, did then and there willfully, unlawfully and feloniously attack, assault, hack and wound one MARCELINO SOLIA on the anterior aspect M/3 (R) forearm with the use of a long bladed weapon, thus, the accused started the commission of the crime of murder directly by overt acts but was not able to perform all the acts of execution which would have produced the crime of murder as a consequence by reason or cause other than [sic] his own spontaneous desistance, that is, by the timely escape of the said victim MARCELINO SOLIA.

ACTS CONTRARY TO LAW.

¹ Rollo, pp. 4-19; penned by Associate Justice Geraldine C. Fiel-Macaraig, with Associate Justices Pamela Ann Abella Maxino and Louis P. Acosta, concurring.

² CA rollo, pp. 36-37.

Crim. Case No. 2892

That on or about the 4th day of October, 2019, in the Municipality of La Paz, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery by suddenly and unexpectedly and without giving the victim FELICIANO C. SOLIA an opportunity to defend himself, did then and there willfully, unlawfully and feloniously attack, assault, hack, shot, hit and wound the said FELICIANO C. SOLIA with the use of [a]bladed weapon and an unlicensed firearm which the accused provided himself for the purpose, thereby hitting and inflicting upon the victim wounds on the different parts of his body which caused his death shortly thereafter.

ACTS CONTRARY TO LAW.

Upon arraignment, Agraba pleaded not guilty to the crimes charged. He invoked self-defense during the pre-trial conference, and a reverse joint trial ensued.³

The prosecution established that in the evening of October 4, 2009, Marcelino, Feliciano and Rodgie Pauyon (Rodgie) went to the house of a certain Opaw to buy some meat. Since Opaw's house was closed when they arrived, their group decided to walk back home. As they passed by the house of Norman, Agraba suddenly appeared and stopped them. Agraba then hacked Marcelino with a *bolo* hitting his right forearm. Feliciano and Rodgie ran towards the porch of Norman's house. Agraba told Marcelino that he was not his target, but his younger brother, Feliciano. Marcelino shouted at Feliciano to run. At that point, Agraba took out a pistol and shot Feliciano, who fell down after being hit. Agraba then approached Feliciano and hacked him. Marcelino went home to tell their father what had happened. When Marcelino and his father returned to the place of the incident, they saw Feliciano with several wounds on his body, lying lifeless on the ground.⁴

In his testimony, Agraba narrated that on October 4, 2009, at around 7:00 p.m., he visited Norman Diaz (Norman) to check on the pig that he had entrusted to the latter. They later slaughtered the pig and feasted on its meat. They also drank *tuba* with some friends. Suddenly, the brothers Feliciano Solia (Feliciano) and Marcelino Solia (Marcelino), who were both armed with a *bolo*, arrived. Agraba claimed that he heard Feliciano mutter that it was a good occasion to kill him. Marcelino then hacked the wall of the house. Terrified, Agraba ran away but Feliciano chased him. Agraba alleged that when he stumbled and fell on the ground, Feliciano tried to hack him. The two men struggled and as Agraba tried to seize the *bolo*, he wounded Feliciano in the process. Agraba further testified that Marcelino came to his brother's aid and hacked him but the *bolo* hit a coconut trunk, giving him an opportunity to escape. Upon reaching their house, Agraba told his wife about the incident.

³ Id. at 37-38.

⁴ *Rollo*, p. 7.

They went to the house of Barangay Captain Danilo Gomez, who accompanied Agraba to the police station the following day to surrender.⁵

The RTC Ruling

The RTC rendered its Decision finding Agraba guilty beyond reasonable doubt of murder and attempted murder, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, finding the accused Santiago Agrava, Jr., guilty beyond reasonable doubt of the crime of murder in Crim. Case No. 2892, this Court hereby sentences the said Accused to suffer a penalty of Reclusion Perpetua, hereby ordering the said Accused to indemnify the Heirs of the victim, Feliciano Solia, in the amount of SEVENTY FIVE THOUSAND (Php.75,000.00) PESOS, as well as to pay the amount of FIFTY THOUSAND PESOS (Php.50,000.00) representing moral damages and to pay the cost.

WHEREFORE, finding the same Accused Santiago Agrava, Jr., guilty beyond reasonable doubt of the crime of Attempted Murder in Criminal Case No. 2893 of the victim Marcelino Solia [sic], this Court hereby sentences the said Accused to suffer and [sic] indeterminate penalty of ONE (1) YEAR[,] SEVEN (7) MONTHS and ELEVEN (11) DAYS of Arresto Mayor in its Maximum Period as the Minimum Term to SIX (6) YEARS, ONE (1) MONTH and ELEVEN (11) DAYS Prision Correccional in its Maximum Period as the Maximum Term. Hereby ordering further, the said Accused to indemnify the victim Marcelino Solia the amount of FIFTY THOUSAND (Php.50,000.00) PESOS and THIRTY THOUSAND (Php.30,000.00) PESOS as exemplary damages and to pay the cost.

SO ORDERED.⁶

Aggrieved, Agraba appealed to the CA.

The CA Ruling

In a Decision dated February 19, 2018, the CA affirmed the RTC Decision with modifications, as follows:

WHEREFORE, the instant appeal is DENIED. The 28 May 2015 Decision of the Regional Trial Court, Branch 10, of Abuyog, Leyte, is AFFIRMED with the following MODIFICATIONS:

1. In Crim. Case No. 2892, Santiago Agraba, Jr. is ordered to INDEMNIFY the heirs of the Feliciano Solia the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P75,000.00 as exemplary damages, plus interest on the aggregate amount at the rate of six

⁵ Id. at 6.

⁶ Id. at 8.

percent (6%) per annum from the finality of this Decision until fully paid; and,

2. In Crim. Case No. 2893, Santiago Agraba, Jr. Is SENTENCED to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum to six (6) years and one (1) day of *prision mayor*, as maximum. He is further directed to INDEMNIFY Marcelino Solia the amounts of P25,000.00 as civil indemnity, P25,000.00 as moral damages, and P25,000.00 as exemplary damages, plus interest on the aggregate amount at the rate of six percent (6%) per annum from the finality of this Decision until fully paid.

SO ORDERED.⁷

Hence, this appeal.

Issue

The issue for the Court's resolution is whether or not Agraba is guilty beyond reasonable doubt of murder and attempted murder.

The Court's Ruling

The appeal is dismissed.

One who admits killing or fatally injuring another in the name of self-defense bears the burden of proving: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person claiming self-defense.⁸ By invoking self-defense, the burden is placed on the accused to prove its elements clearly and convincingly.⁹ In this case, Agraba utterly failed to discharge this burden. The trial court noted that the evidence of the prosecution as to how the hacking incident happened was more credible than Agraba's version. It found that the wounds sustained by Feliciano showed that Agraba's acts were not for the purpose of self-preservation, and thus, belie his claim of self-defense. Moreover, Agraba failed to prove the existence of unlawful aggression on the part of Marcelino and Feliciano.

Self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence or when it is extremely doubtful by itself. Indeed, in invoking self-defense, the burden of evidence is shifted and the accused claiming self-defense must rely on the strength of his/her own

⁷ Id. at 18-19.

⁸ See *People v. Macaraig*, 810 Phil. 931, 937 (2017).

⁹ Id.

evidence and not on the weakness of the prosecution.¹⁰ The trial court and the CA cannot, therefore, be faulted for rejecting appellant's plea of self-defense.

To successfully prosecute the crime of murder, the following elements must be established: (a) a person was killed; (b) the accused killed him or her; (c) the killing is not Parricide or Infanticide; and (d) the killing was accompanied with any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC).¹¹ Notably, if the accused killed the victim without the attendance of any of the qualifying circumstances of murder, or by that of parricide or infanticide, a conviction for the crime of Homicide will be sustained.¹²

In Criminal Case No. 2892, it is undisputed that Agraba was responsible for the killing of Feliciano. The Medico-Legal Certificate shows that the injuries sustained by Feliciano after he was shot and hacked by Agraba caused his immediate death. The Court is now left to determine whether or not the killing was attended by the qualifying circumstance of treachery as alleged in the information.

Case law instructs that “[t]here is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.” In other words, to appreciate treachery, it must be shown that: (a) the means of execution employed gives the victim no opportunity to defend himself or retaliate; and (b) the methods of execution were deliberately or consciously adopted; indeed, treachery cannot be presumed, it must be proven by clear and convincing evidence.¹³

The Court finds that the qualifying circumstance of treachery was present in the killing of Feliciano. Agraba argued that it was impossible for treachery to be present because Marcelino warned Feliciano of the imminent peril. However, assuming that Marcelino was able to give such a warning, Feliciano did not have ample time to defend himself. It must be stressed that Agraba first used a *bolo* in hacking Marcelino, but realizing he had attacked the wrong person, he changed his weapon to a pistol and shot Feliciano. In deliberately using his gun, Agraba not only ensured the execution of the crime, but he also avoided any risk to himself. Thereafter, when Feliciano fell after being shot, Agraba hacked him several times.

¹⁰ *Razon v. People*, 552 Phil. 359, 372-373 (2007).

¹¹ See *Ramos v. People*, 803 Phil. 775, 783 (2017), citing *People v. Las Piñas*, 739 Phil. 502, 524 (2014).

¹² See *Wacoy v. People*, 761 Phil. 570, 578 (2015), citing *Villanueva v. Caparas*, 702 Phil. 609, 616 (2013); citation omitted.

¹³ *People v. Casas*, 755 Phil. 210, 221 (2015).

Likewise, the CA held that all the elements of attempted murder were present in Criminal Case No. 2893. The third paragraph, Article 6 of the RPC provides that:

X X X X

There is an attempt when the offender commences the commission a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

With respect to attempted or frustrated murder, the principal and essential element thereof is the intent on the part of the assailant to take the life of the person attacked.¹⁴ Such intent must be proved in a clear and evident manner to exclude every possible doubt as to the homicidal intent of the aggressor.¹⁵ The following factors are considered to determine the presence of intent to kill, namely: (1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, during, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused.¹⁶

In the instant case, although Agraba's attack befell the wrong person, his intent to kill remains because when he ambushed the group, such intent was already present. Agraba's intent to kill can be clearly inferred from the surrounding circumstances. He carried with him a deadly weapon when he confronted the brothers Marcelino and Feliciano. Moreover, records show that Agraba suddenly hacked Marcelino with a *bolo* hitting his right forearm. The conduct of Agraba, with the surrounding circumstances before and during the time that Marcelino was injured, is clear evidence of his intent to kill the latter.

The essential elements of an attempted felony are as follows: (1) the offender commences the commission of the felony directly by overt acts; (2) he does not perform all the acts of execution which should produce the felony; (3) the offender's act is not stopped by his own spontaneous desistance; and (4) the non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.¹⁷

In this case, Agraba commenced the execution of the felony directly by an overt act when he swung his *bolo* and hit Marcelino on the right forearm. However, he failed to perform all the acts of execution which should have produced the crime of murder by reason of some cause or accident other than

¹⁴ *Engr. Pentecostes, Jr. v. People*, 631 Phil. 500, 512 (2010).

¹⁵ *Id.*

¹⁶ *De Guzman, Jr. v. People*, 748 Phil. 452, 458-459 (2014).

¹⁷ *Fantastico, et al. v. Malicse, Sr., et al.*, 750 Phil. 120, 131 (2015).

his own spontaneous desistance. Although Agraba stopped attacking Marcelino when he realized that he had attacked the wrong person, such desistance is not the spontaneous desistance contemplated by law to exempt him from any criminal liability. His spontaneous desistance should be made before all acts of execution are performed.

It bears stressing at this point that while the information in Criminal Case No. 2892 alleged that Agraba used an unlicensed firearm in the commission of the crime, the prosecution failed to prove the existence of such aggravating circumstance.

During the trial *a quo*, the prosecution presented witnesses who testified that Feliciano was indeed shot by Agraba before being hacked to death. The prosecution, however, failed to present any evidence, both documentary and testimonial, to prove that the firearm used was unlicensed. Otherwise stated, there was no evidence that Agraba was not a duly licensed holder of a firearm.

Based on its Formal Offer of Evidence,¹⁸ the prosecution failed to offer in evidence a certification from the Philippine National Police Firearms and Explosives Division to show that Agraba had no permit or license to own or possess a firearm. Nor did it present the responsible police officer on the matter of licensing as a prosecution witness. As enunciated in the case of *People v. Ignas*,¹⁹ absent the proper evidentiary proof, this Court cannot validly declare that the special aggravating circumstance of use of unlicensed firearm was satisfactorily established by the prosecution. Hence, such special circumstance cannot be considered for purposes of imposing the penalty in its maximum period.

Pursuant to Article 248 of the RPC, the penalty for murder is *reclusion perpetua* to death. The trial court, as affirmed by the CA, properly imposed the penalty of *reclusion perpetua* in Criminal Case No. 2892 in view of the mitigating circumstance of voluntary surrender. Meanwhile, the penalty for attempted murder is two degrees lower than that prescribed for the consummated felony under Article 51 of the RPC. Hence, the impossible penalty is *prision mayor*. In this case, the penalty shall be imposed in its minimum period considering Agraba's voluntary surrender. Applying the Indeterminate Sentence Law, the minimum penalty to be imposed should be within the range of *prision correccional*, and the maximum should be within the range of *prision mayor* in its minimum period.²⁰ Thus, the CA correctly imposed the penalty of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum.

¹⁸ Records, pp. 78-79.

¹⁹ 458 Phil. 965, 980 (2003).

²⁰ *People v. Gutierrez*, 625 Phil. 471, 483 (2010).

Finally, the CA correctly modified the award of damages, which is consistent with prevailing jurisprudence.²¹

WHEREFORE, the appeal is **DISMISSED**. The assailed Decision of the Court of Appeals in in CA-G.R. CR-HC No. 02147 is **AFFIRMED**.

SO ORDERED.”

By authority of the Court:

MisADC Batt
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Division Clerk of Court
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(Criminal Case Nos. 2892 & 2893)

The Regional Superintendent
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²¹ *People v. Jugueta*, 783 Phil. 806, 848 (2016).