



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PO1 APOLINARIO BAYLE y G.R. No. 210975
JUNIO,

Petitioner,

Present:

CAGUIOA, J., *Acting Chairperson*,
REYES, J. JR.,
LAZARO-JAVIER,
LOPEZ, and
GAERLAN,* JJ.

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

MAR 11 2020

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DECISION

REYES, J. JR., J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks to reverse and set aside the Decision¹ dated June 14, 2013 and the Resolution² dated January 22, 2014, of the Court of Appeals (CA) in CA-G.R. CR No. 32524, which affirmed *in toto* the Decision³ dated September 30, 2008 and the Order⁴ dated February 24, 2009 of the Regional Trial Court of Makati City, Branch 143 (RTC) in Criminal Cases Nos. 04-3391 to 3392, which found herein petitioner Police Officer 1

* Additional member per Raffle dated February 12, 2020 in lieu of Chief Justice Diosdado M. Peralta.

¹ Penned by Associate Justice Francisco P. Acosta, with Associate Justices Fernanda Lampas Peralta and Angelita A. Gacutan, concurring; *rollo*, pp. 48-76.

² Penned by Associate Justice Francisco P. Acosta, with Associate Justices Hakim S. Abdulwahid and Fernanda Lampas Peralta, concurring; *id.* at 79.

³ Penned by Presiding Judge Zenaida T. Galapate-Laguilles; *id.* at 81-102.

⁴ *Id.* at 104-108.

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(PO1) Apolinario Bayle y Junio (Apolinario) guilty beyond reasonable doubt for the crimes of Homicide and Frustrated Homicide, respectively.

The Facts

On October 19, 2004, Apolinario was charged in two Information with the crimes of Homicide and Frustrated Homicide, respectively committed against Lorico R. Lampa (Lorico) and Crisanto L. Lozano (Crisanto). The inculpatory allegations of the two Information respectively read:

Criminal Case No. 04-3391 (Homicide)

That on or about the 17th day of October 2004, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, with intent to kill, without justifiable motives, did then and there willfully, unlawfully and feloniously shot one LORICO LAMPA Y RAYRAY, thereby inflicting upon the latter mortal wounds which directly caused his death.

CONTRARY TO LAW.⁵

Criminal Case No. 04-3392 (Frustrated Homicide)

That on or about the 17th day of October 2004, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, with intent to kill, without justifiable motives, did then and there willfully, unlawfully and feloniously shot one CRISANTO LOZANO Y LAMPA with a gun[,] thus[,] performing all the acts of execution which would have produced the crime of homicide as a consequence but nevertheless, did not produce said crime by reason of cause or causes independent of his will, that is due to the timely and able medical assistance rendered to said Crisanto Lozano y Lampa, which prevented his death.

CONTRARY TO LAW.⁶

On November 9, 2004, Apolinario, duly assisted by counsel, was arraigned and pleaded not guilty to the charges against him.⁷ Thereafter, trial on the merits ensued.

⁵ Records, p. 2.

⁶ Id. at 4.

⁷ Id. at 71.

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Evidence for the Prosecution

The prosecution presented five witnesses, namely: Crisanto himself, Ricardo Lampa (Ricardo), Lorico's father, Daniel Mercado, Jr. (Daniel), PO1 Nildo Orsua (PO1 Orsua), and Dr. Teresita R. Sanchez (Dr. Sanchez). The prosecution also presented rebuttal evidence wherein they presented two more witnesses, namely: Estrellita A. Laguimin and Maria Concepcion B. Alawaddin. As could be gathered from the RTC Decision, the relevant testimonies could be summarized, as follows:

On October 17, 2004, at around 7:00 p.m., Crisanto was at home watching television⁸ when he heard his cousin, Lorico, shouting. He immediately went outside to see what was happening. He saw Lorico outside of 190-D 21st Avenue, Barangay East Rembo, Makati City engaged in a heated verbal exchange with a man,⁹ later identified to be Apolinario.¹⁰ He then approached Lorico to pacify him. But as soon as he approached, three drunk persons, who appear to be Apolinario's companions, blocked his path.¹¹ Apolinario then went up his house, apparently to get his gun. While inside his house, the man was being pacified by his wife, later identified to be PO2 Jessica T. Bayle (Jessica). However, Jessica's efforts failed as Apolinario went down again.¹²

Meanwhile, Ricardo was watching television inside his house when one of his sons, Reynaldo Lampa (Reynaldo), called him out and told him that his other son, Lorico, was outside having an altercation with Apolinario.¹³ Thus, Ricardo went outside to look for Lorico. Outside, Ricardo was beside Lorico when he noticed Apolinario descending from the stairs. Apolinario stopped at the middle of the stairs and pointed his gun at Crisanto.¹⁴ Scared, Crisanto ran away, but Apolinario still shot him hitting him at the left side of his back. Immediately after, Apolinario shot Lorico hitting the latter at his upper left chest.¹⁵ After shooting Lorico, Apolinario poked his gun at Ricardo and told him "*ikaw, gusto mo sumunod?*"¹⁶ Thereafter, Jessica descended from the stairs and told Apolinario to get inside their house.¹⁷

⁸ TSN, April 26, 2005, p. 7.

⁹ TSN, March 22, 2005, pp. 13-15; TSN, April 26, 2005, p. 8.

¹⁰ TSN, April 26, 2005, p. 10.

¹¹ Id. at 11.

¹² Id. at 12.

¹³ TSN, February 8, 2005, pp. 9-10.

¹⁴ Id. at 11-12.

¹⁵ TSN, March 22, 2005, pp. 17-18; TSN, April 26, 2005, pp. 12-13.

¹⁶ TSN, February 8, 2005, p. 16; TSN, March 22, 2005, pp. 18-19.

¹⁷ TSN, March 22, 2005, pp. 21-22.

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Ricardo then shouted for help and sought the assistance of the people nearby.¹⁸ Ricardo, Daniel, and a certain Neil Garlan carried Lorico beside the road. From there, Lorico was brought to the Ospital ng Makati through a taxi;¹⁹ Ricardo followed to the hospital after.²⁰ Unfortunately, Lorico was declared dead-on-arrival. As to Crisanto, he was also brought to the Ospital ng Makati with the help of his sister-in-law. Upon arriving at the hospital, Crisanto was rushed to the emergency room where an operation was performed on him. He stayed at the Ospital ng Makati until October 23, 2004.²¹

A few minutes after the incident, several policemen, including PO1 Orsua, arrived and started their investigation. After asking for the identity and whereabouts of the assailant, the investigators proceeded to Apolinario's house.²² After a while, another group of police officers arrived at the scene.²³ The police officers then proceeded in front of Apolinario's house and introduced themselves as policemen. Jessica came out of the house and also introduced herself as a police officer. She then stated that she and Apolinario will go with the police officers peacefully. Apolinario also turned his firearm to the arresting officers peacefully. Thereafter, Apolinario was put in handcuffs and was brought to the police precinct.²⁴

Dr. Sanchez testified that she examined the cadaver of Lorico on October 17, 2004 at the Ospital ng Makati, but admitted that she was not the one who conducted the autopsy.²⁵ Her observations were recorded in the Medico-Legal Report she prepared.²⁶ She noted a gunshot wound, the point of entry of which was at the left side of the anterior chest, upper portion.²⁷ There was no exit wound, although there was a huge bulge at the lumbar area of the vertebrae.²⁸ On cross-examination, she opined that the assailant was at a higher position than Lorico when he was shot due to the trajectory of the bullet.²⁹ Dr. Sanchez also examined Crisanto.³⁰ Her observations were recorded in a Medico-Legal Report.³¹ She noted that Crisanto sustained a gunshot wound, the point of entry of which was on the left side of his body and exited more or less near the armpit.³² She opined that the shooter shot

¹⁸ TSN, February 8, 2005, p. 17; TSN, March 22, 2005, p. 23.

¹⁹ TSN, February 8, 2005, p. 18; TSN, March 22, 2005, p. 25.

²⁰ TSN, March 14, 2005, p. 14.

²¹ TSN, April 26, 2005, pp. 13-14.

²² TSN, March 22, 2005, pp. 27-28; TSN, July 11, 2005, p. 11-12.

²³ TSN, July 11, 2005, p. 13.

²⁴ Id. at 14-18.

²⁵ TSN, October 3, 2005, pp. 7-8, 22.

²⁶ Records, p. 360.

²⁷ TSN, October 3, 2005, p. 10.

²⁸ Id. at 12-13.

²⁹ Id. at 41-42.

³⁰ Id. at 14.

³¹ Records, p. 359.

³² TSN, October 3, 2005, p. 15.

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Crisanto at his back.³³ On cross-examination, Dr. Sanchez stated that aside from the gunshot wound, she also noted that Crisanto suffered from a lacerated wound which may have been caused by a blunt object or from physical confrontation with another person. The doctor observed that the lacerated wound may have been possibly inflicted at the same time or around the time when Crisanto was shot.³⁴

Ricardo further testified that Lorico was 27 years old when he died.³⁵ Before his death, Lorico was working as a senior craftsman in Libya³⁶ earning US\$500.00 a month.³⁷ Ricardo recalled that Lorico was just spending his vacation with them at that time.³⁸ For his part, Crisanto testified that he and his family spent a total of ₱39,640.00 for his hospital and medical expenses. This was supported by various receipts offered in evidence.³⁹

Evidence for the Defense

The defense sought to establish the justifying circumstances of self-defense and defense of a relative. The defense presented eight witnesses, namely: Apolinario himself, his wife Jessica, Loreto P. Flores (Loreto), Redentor M. Orpiano (Redentor), Lolita delos Reyes (Lolita), Dr. Ma. Cristina B. Freyra⁴⁰ (Dr. Freyra), Dr. Sanchez, and Police Senior Inspector Armin A. Guerrero (PSI Guerrero). As could be gleaned from the RTC Decision, the defense's version of the incident could be summarized, as follows:

On September 20, 2004, Apolinario and Jessica, both police officers, rented from Redentor an apartment unit located at the second floor of 190-D 21st Avenue, East Rembo, Makati City.⁴¹ At that time, Jessica was almost eight months pregnant, as in fact, she gave birth on November 15, 2004.⁴² On October 17, 2004, they were at the rented unit together with two friends, Loreto and one Benjamin Reinedo (Benjamin).⁴³ Meanwhile, there was a party at the compound owned by the Lampas, which was located in front of their apartment, apparently to celebrate a baptismal and also because of the

³³ Id. at 18.

³⁴ Id. at 29-32.

³⁵ TSN, February 8, 2005, pp. 34-35.

³⁶ Id. at 24.

³⁷ Id. at 28.

³⁸ Id. at 27.

³⁹ TSN, April 26, 2005, pp. 14-18.

⁴⁰ Also referred to as "Dr. Ma. Cristina B. Freira" or "Dr. Ma. Cristina D. Freyra" in some parts of the records.

⁴¹ TSN, January 17, 2006, pp. 8-10; TSN, December 11, 2006, p. 12.

⁴² TSN, January 17, 2006, pp. 10-11.

⁴³ Id. at 15-16.

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arrival of a certain *balikbayan*.⁴⁴ There were also men having a drinking spree inside the Lampa compound.⁴⁵

Inside the apartment, Apolinario and their friends were chatting and laughing while waiting for Jessica's brother Christopher Tupas (Christopher),⁴⁶ when Lorico shouted outside of their apartment uttering the following: "*mga walang hiya kayo, ang yayabang ninyo, kabago-bago pa lang ninyo dito ang iingay ninyo, pagpapatayin ko kaya kayo diyan.*" Apolinario retorted with a curse. Jessica then tried to pacify her husband.⁴⁷ A few minutes later, however, someone from the Lampa compound shouted again and hurled curses.⁴⁸ Jessica then went to the door and told the man who was shouting "*pasensya na po, bukas na natin pag-usapan kung ano man yan.*" As Jessica was about to close the door, however, the door swung open causing her to fall down with her nose hitting the floor. Then, Crisanto and a certain Allan Lampa (Allan), both armed with bladed weapons, entered the house. Crisanto attacked Jessica, but Apolinario jumped over him,⁴⁹ while Allan attacked Benjamin and Loreto. Benjamin was grappling with Allan for the knife while Loreto was repeatedly kicking Allan. Because of the kicks, Allan fell down the stairs together with Benjamin who did not let go of the knife.⁵⁰

Meanwhile, Crisanto and Apolinario wrestled with each other, the former even injuring the latter's neck when the tip of the knife grazed his neck.⁵¹ However, Apolinario was able to successfully free himself from Crisanto and even disarmed him. Apolinario then proceeded to their room to get his gun. Crisanto tried to follow Apolinario, but Jessica grabbed and took hold of his 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 wife and unborn child.⁵² 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.⁵³ 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,*" but Lorico did not stop, prompting Apolinario to shoot him.⁵⁴ Jessica recounted that Lorico was shot when the

⁴⁴ TSN, January 17, 2006, pp. 20-21; TSN, December 11, 2006, p. 22.

⁴⁵ TSN, January 17, 2006, p. 22.

⁴⁶ TSN, January 17, 2006, p. 25; TSN, December 11, 2006, p. 24.

⁴⁷ TSN, January 17, 2006, pp. 30-33; TSN, March 7, 2006, pp. 14-17; TSN, December 11, 2006, pp. 25-27.

⁴⁸ TSN, January 17, 2006, p. 34; TSN, March 7, 2006, p. 18.

⁴⁹ TSN, January 17, 2006, pp. 35-36, 46-47; TSN, March 7, 2006, pp. 19-27; TSN, December 11, 2006, pp. 28-31.

⁵⁰ TSN, January 17, 2006, pp. 35-36, 46-47; TSN, March 7, 2006, pp. 19-27.

⁵¹ TSN, January 17, 2006, pp. 38-39; TSN, December 11, 2006, pp. 32-34.

⁵² TSN, January 17, 2006, pp. 41-42; TSN, December 11, 2006, pp. 33, 42-43.

⁵³ TSN, January 17, 2006, p. 43; TSN, February 7, 2006, p. 6; TSN, March 7, 2006, pp. 29-30; TSN, December 11, 2006, p. 45.

⁵⁴ TSN, January 17, 2006, pp. 43-45; TSN, December 11, 2006, pp. 45-49.

latter was one step away from the door;⁵⁵ while Apolinario recalled that he shot Lorico when the latter was already two arm's-length from them.⁵⁶

After being hit, Lorico fell down from the stairs.⁵⁷ After that, Christopher arrived and pleaded to Jessica to let him in.⁵⁸ After letting her brother inside, Jessica closed the door of their apartment before going with Apolinario and Redentor inside the latter's own apartment downstairs.⁵⁹ Benjamin and Loreto were already at Redentor's apartment when they came in.⁶⁰ A few minutes later, several policemen arrived. Apolinario and Jessica peacefully went with the policemen to the police precinct.⁶¹ Afterwards, as Jessica's nose was bleeding and due to the injury sustained by Apolinario, the police officers brought them to the Ospital ng Makati.⁶²

Dr. Freyra testified that she was the medico-legal officer who conducted the autopsy on Lorico's cadaver.⁶³ Her findings were recorded in the Anatomical Sketch⁶⁴ and Medico-Legal Report No. M-399-04 dated October 17, 2004.⁶⁵ She testified that the bullet which caused Lorico's death entered the left infra lobecular region which is the left side of the body just below the collarbone, while the bullet was recovered at the vertebra region at the back or at the center of the body at the back of the spinal cord.⁶⁶ Dr. Freyra further confirmed that the bullet that killed Lorico traveled in a downward trajectory. She clarified, however, that there are two possibilities for this downward trajectory: either the assailant was positioned on a higher ground than the victim, or they are on the same level, but the victim was stooping down or that the upper part of his body was slightly bending.⁶⁷

Dr. Sanchez, who was also presented as an expert witness for the prosecution, testified that Apolinario and Jessica have also been examined at the Ospital ng Makati on October 17, 2004,⁶⁸ and that the findings on them have been reduced to writing in separate Medico-Legal Reports which she prepared.⁶⁹ Dr. Sanchez testified that based on hospital records, Apolinario suffered abrasions on his neck and right hand, which may have been caused

⁵⁵ TSN, January 17, 2006, p. 52.

⁵⁶ TSN, December 11, 2006, p. 48.

⁵⁷ TSN, January 17, 2006, p. 49; TSN, March 7, 2006, pp. 32-33.

⁵⁸ TSN, January 17, 2006, p. 52.

⁵⁹ TSN, January 17, 2006, pp. 55-56; TSN, April 3, 2006, pp. 18-19; TSN, December 11, 2006, p. 52.

⁶⁰ TSN, January 17, 2006, p. 57; TSN, March 7, 2006, p. 38.

⁶¹ TSN, January 17, 2006, pp. 57-59; TSN, March 7, 2006, p. 39; TSN, December 11, 2006, pp. 54-56.

⁶² TSN, January 17, 2006, pp. 60-61; TSN, December 11, 2006, pp. 60-61.

⁶³ TSN, May 9, 2006, p. 15.

⁶⁴ Records, p. 378.

⁶⁵ Id. at 376.

⁶⁶ TSN, May 9, 2006, pp. 17-18.

⁶⁷ Id. at 24-25.

⁶⁸ TSN, May 28, 2007, pp. 13-14.

⁶⁹ Records, pp. 370-371.

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by a blunt or sharp object.⁷⁰ On the other hand, Jessica suffered contusion or hematoma at the bridge of her nose.⁷¹

In further support of the claim that there was unlawful aggression on the part of Lorico and Crisanto, the defense also presented photographs showing the injuries sustained by Apolinario on his neck and hands.⁷² They also attached photographs of the apartment where the incident happened. The photographs showed an outdoor seven-step concrete staircase leading to the apartment rented by the Bayles, with the seventh step directly connected to the unit's doorway.⁷³

Ruling of the RTC

In its Decision dated September 30, 2008, the RTC found Apolinario guilty beyond reasonable doubt of the crimes of Homicide, for the killing of Lorico, and Frustrated Homicide, for the injuries sustained by Crisanto. The trial court stressed that whenever the justifying circumstance of self-defense is invoked, the burden of evidence shifts to the accused to show that the killing was legally justified. The trial court ruled that Apolinario failed to establish the elements of self-defense.

With respect to Crisanto, the trial court opined that while he was the aggressor in the beginning, his aggression towards Apolinario ceased to exist when he turned his attention towards Jessica. Thus, self-defense could not be appreciated. The trial court also continued that while Jessica may have been exposed to danger, the same was not life-threatening. It reasoned that Crisanto's shift of attention to Jessica, no matter how brief, could have given Apolinario an opportunity to deliberate on what action to take.

Likewise, the trial court ruled that no justifying circumstance attended the killing of Lorico. It emphasized that unlawful aggression, as an element of self-defense, is not merely a threatening or intimidating attitude. It held that while Lorico may have been rash, bold and visibly irate when he barged into the unit of the Bayles armed with a knife, there was no imminent danger on their lives or limbs especially considering that, as police officers, a firearm was available in their dwelling for their defense. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered finding accused PO1 Apolinario Bayle GUILTY beyond reasonable doubt of the crime of

⁷⁰ TSN, May 28, 2007, pp. 17-18, 22.

⁷¹ Id. at 18.

⁷² Records, p. 369.

⁷³ Id. at 367.

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Homicide in Criminal Case No. 04-3391 and he is hereby sentenced to suffer an indeterminate prison term of eight (8) years and one (1) day of *Prision Mayor* as minimum, to fourteen (14) years, eight (8) months and one (1) day of *Reclusion Temporal*, as maximum. He is likewise ordered to pay the heirs of the victim Lorico Lampa the sum of Php 50,000.00 as civil indemnity *ex-delicto* and loss of earning capacity in the sum of Six Million Forty-nine Thousand Eight Hundred Seventy-two Pesos (Php 6,049,872.00), and to pay the costs.

Judgment is likewise rendered in Criminal Case No. 04-3392 finding accused PO1 Apolinario Bayle GUILTY of the crime of Frustrated Homicide and he is hereby sentenced to suffer an indeterminate prison term of six (6) 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 likewise ordered to indemnify Crisanto Lozano the sum of Thirty-nine thousand Six Hundred Forty Pesos (Php 39,640.00) representing actual damages, and to pay the costs.

SO ORDERED.⁷⁴

Apolinario moved for reconsideration, but the same was denied by the RTC in its Order dated February 24, 2009.

Aggrieved, Apolinario elevated an appeal to the CA.

Ruling of the CA

In its Decision dated June 14, 2013, the CA affirmed the conviction of Apolinario. The appellate court ruled that there was no unlawful aggression on the part of Crisanto. It noted that Apolinario only sustained scratches on his neck and hands which, according to Dr. Sanchez, may have been caused by contact with a rough surface. The appellate court found these scratches to be inconclusive to support the existence of a struggle between Apolinario and Crisanto. It also noted that the allegation of strangulation by Crisanto was not supported by physical evidence considering that the defense failed to show that Jessica sustained injuries on her throat or inside her mouth. It further pointed out that the defense failed to present in evidence the knife allegedly used by Crisanto in his unlawful assault. For the appellate court, without the presentation of the said weapon, the claim of self-defense could not be believed.

The appellate court likewise ruled that Apolinario shot Lorico without the attendance of any justifying circumstance. It stated that Apolinario's claim that Lorico attempted to stab him and his wife from the stairs is highly unbelievable considering the difficulty of mounting such an attack

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Rollo, p. 102.

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considering the steepness and narrowness of the stairs. The appellate court emphasized that based on the medical findings, the bullet which killed Lorico struck him at his shoulder and to the middle of his back trajecting “*posteriorwards, downwards and medialwards.*” According to the appellate court, this only shows that Lorico was shot at a very steep angle and the person who shot him was standing on a much higher ground, which is consistent with the testimonies of the prosecution witnesses. It also pointed out the apparent inconsistencies between the physical evidence and the testimonies of the defense witnesses. The appellate court also stated that it was highly unlikely for the victims to deliberately attack Apolinario and Jessica considering the fact that the spouses are police officers who are necessarily armed with service pistols. It opined that no person in his right mind would deliberately create an altercation with them. The dispositive portion of the decision states:

WHEREFORE, the instant Appeal is hereby DISMISSED. The assailed Decision of the Regional Trial Court dated 30 September 2008 is hereby AFFIRMED *in toto*.

SO ORDERED.⁷⁵

Apolinario moved for reconsideration, but the same was denied by the CA in its Resolution dated January 22, 2014.

Hence, this petition.⁷⁶

The Issue

WHETHER THE TRIAL AND [THE] APPELLATE COURTS ERRED WHEN THEY RULED THAT PETITIONER APOLINARIO BAYLE FAILED TO ESTABLISH THE EXISTENCE OF THE JUSTIFYING CIRCUMSTANCES OF SELF-DEFENSE AND DEFENSE OF A RELATIVE.

The Court's Ruling

The version of the defense was more consistent with the evidence.

It is settled that findings of facts and assessment of credibility of witnesses are matters best left to the trial court.⁷⁷ As such, it is also the trial court

⁷⁵ Id. at 76.

⁷⁶ Id. at 11-43.

⁷⁷ *People v. An*, 612 Phil. 476, 488 (2009).

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which could best address the issue of the determination of the identity of the unlawful aggressor considering that it is also a factual matter.⁷⁸ While the trial court adjudged Apolinario guilty beyond reasonable doubt for the criminal charges against him, the trial court nevertheless considered the defense's version of the incident to be more believable.

In its September 30, 2008 Decision, the trial court has this to say, thus:

It is clear from the foregoing that at the time the accused saw his wife Jessica being strangled by Crisanto, the attention of the latter was focused on what he was doing at that precise moment. There was no showing that Crisanto was armed all the time; neither was there a showing that while strangling Jessica, the former was still armed. In fact, accused admitted having grabbed the knife from Crisanto. While Crisanto was inceptually the aggressor, the aggression against the accused ceased to exist when the former turned his ire to Jessica. Aggression, if not continuous, does not constitute aggression warranting self-defense. Also, this momentary shift of attention to Jessica could have given the accused also an opportunity, no matter how brief, to deliberate on what action to take. While his wife was certainly exposed to danger at that point, the danger, to a certain extent, was not life-threatening. And certainly, there was no immediate or imminent danger to the person of the accused at that precise point by reason of Crisanto's momentary focus on Jessica. And more, Crisanto was shot at the left side of his back; which only indicates that the latter at that point was no longer the aggressor of the accused. Shooting Crisanto with a .45 caliber revolver firearm at a considerably close distance, even on the stretched assumption that there was indeed unlawful aggression on his part does not satisfy the requirement of "reasonable necessity of the means employed to prevent or repel that unlawful aggression."

x x x The Court takes note that the accused recounted that Lorico came fast ascending the stairs with his eyes blazing ("*nanlilisik*") with a knife in hand. The deceased allegedly shouted "ahhhhhhh..." and still rushed towards the accused and his wife despite warning from the accused. This Court opines that even if the deceased at that point was poised to inflict a deadly blow, the accused could still have repelled him in a manner that may not cost his (Lorico's) life, "such as disabling the latter by shooting his arm or leg." After all, the accused was, and still is, a policeman who from his own account, was trained in the handling and firing of a firearm.⁷⁹

A thorough review of the records of the case gives more light on why the trial court found the version of the defense more credible. The records of the case confirm that the findings of facts by the trial court are sufficiently supported by the evidence and testimonies presented by the defense.

⁷⁸ *Rugas v. People*, 464 Phil. 493, 503 (2004).

⁷⁹ *Rollo*, pp. 98-100.

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The testimonies of the defense witnesses are consistent with the physical evidence. The Court observes that Apolinario, Jessica, and Loreto all testified that as Jessica was closing the door of their apartment unit, two men suddenly forced the door open hitting her and slamming her nose to the floor in the process. That Jessica sustained injuries on her nose was confirmed by the Medico-Legal Report which was prepared by Dr. Sanchez based on the records of the Ospital ng Makati. Moreover, Apolinario and Jessica testified that the former wrestled with Crisanto for the possession of a knife. During the struggle, Crisanto was able to injure Apolinario's neck with the tip of the knife. Again, that Apolinario sustained injury on his neck is supported by the Medico-Legal Report which was prepared by Dr. Sanchez based on the records of the Ospital ng Makati.

During her cross-examination when she was presented as an expert witness for the defense, Dr. Sanchez even corrected the prosecution when the latter tried to imply that Apolinario's abrasions on the neck and hand were caused only by a blunt object, thus:

ATTY. VILLAREAL:

Q: Earlier on, you also testified that with respect to the medico[-]legal report of Apolinario J. Bayle, the contusion and the multiple abrasion on the right arm could have been caused by a blunt object?

A: **Or sharp object.**⁸⁰ (Emphasis supplied)

Further, the version of the defense is actually consistent with the physical evidence presented by the prosecution, as well as with the testimony of their expert witness.

It must be recalled that the Medico-Legal Report as to Crisanto revealed that aside from the gunshot wound, he also sustained a lacerated wound on his left arm. The said report provides:

PERTINENT PHYSICAL EXAMINATION:

1. Gunshot wound, #2 1cm., axillary area, left.
2. **Lacerated wound, 1.5 cm., anterior aspect, proximal third, arm, left.**
3. Gunshot wound, 0.5 cm., inferior aspect, scapular area, left.⁸¹
(Emphasis supplied)

⁸⁰ TSN, May 28, 2007, p. 22.

⁸¹ Supra note 31.

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When asked for clarification regarding Crisanto's lacerated wound, Dr. Sanchez testified that the said wound may have been caused by a blunt object or from physical confrontation with another person, thus:

ATTY. ZARATE:

Q: What is this Lacerated wound Madam Witness, can you please describe this?

A: It is an irregular wound, open wound caused by a [blunt] object.

Q: What is a [blunt] object, Madam Witness?

A: Anything that is not sharp [sic] pointed.

Q: Not sharp?

A: Yes like a hand may be a hard object like wood. Like in the gun, may be the other portions of the gun, other than the bullet. If you are hit, that is also considered a [blunt] object.

Q: How deep was the wound, Madam Witness?

A: About 1.5 centimeters.

Q: And then when you examined the wound, is it still fresh?

A: Yes, sir.

Q: So, it is very possible that the wound was inflicted almost at the same time or around the same time when the gun was also fired at him?

A: Yes, sir.

Q: And it is possible that this wound was [sic] resulted from a body confrontation with another person?

A: Yes, sir.⁸²

The fact that Jessica and Apolinario sustained injuries on different parts of their bodies, and the fact that Crisanto sustained a lacerated wound, aside from the points of entry and exit of the bullet which hit him, is consistent with the version of the defense that prior to the actual shooting, there was a physical struggle or confrontation between, at the very least, Apolinario and Jessica on the one hand, and Crisanto on the other. It must be recalled that in the prosecution's version of the incident, there was no such physical confrontation. According to the prosecution, Apolinario shot Crisanto and then Lorico after a heated verbal exchange. This version, however, fails to explain how Apolinario, Jessica, and Crisanto sustained their respective wounds.

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TSN, October 3, 2005, pp. 30-31.

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Considering that the trial court discussed only the defense's version of the incident in its final analysis of the facts of the case, and considering further that the version of the defense is more consistent with the physical evidence presented in court, the Court opines that what was upheld by the trial court was indeed the defense's version of the facts.

Nevertheless, the CA, in its June 14, 2013 Decision, casted doubt on the narration of the incident by the defense. It declared that the claim that Crisanto attacked them with a knife is seriously doubtful. It noted that while Apolinario claimed that he was able to disarm Crisanto, the knife allegedly used by the latter was not presented in evidence. The appellate court also belittled the wounds on the neck and hands of Apolinario stating that such injuries were only scratches which are insufficient to prove that he was subjected to any unlawful aggression.

It also observed that the defense's claim that Lorico, armed with a knife, attempted to attack Apolinario and Jessica from the stairs was highly unbelievable due to the difficulty of mounting such attack. It stressed that the physical evidence shows that Apolinario was on a much higher ground when he shot Lorico. Lastly, the appellate court claimed that it was highly unlikely that the victims could have deliberately attacked the Bayles in their apartment unit considering that they were police officers who are often armed with pistols.

The Court opines that the submissions made by the appellate court did not necessarily destroy the credibility of the evidence presented by the defense.

First, the case of *Rugas v. People*,⁸³ the authority cited by the appellate court when it ruled that Apolinario should have presented the knives allegedly used by Crisanto and Lorico, should not be strictly applied in this case. The failure of the accused in *Rugas* to present the knife allegedly used by the victim in his unlawful aggression was only one of the considerations which impelled the Court to rule for his conviction. It must be noted that in *Rugas*, the accused failed to offer sufficient corroborating evidence in support of his factual proposition. It must further be noted that in the same case, the accused did not allege nor show proof that he suffered any injury as a result of the victim's unlawful aggression. More importantly, in the said case, the trial court found that the accused was indeed the unlawful aggressor.

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Supra note 78.

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The same could not be said in this case. As already stated, the defense's testimonial evidence and the physical evidence from both the prosecution and the defense sufficiently established the presence of a physical confrontation between Apolinario and Jessica, and Crisanto. Again, that Apolinario was subjected to an attack with a knife has been sufficiently shown by the Medico-Legal Report prepared by Dr. Sanchez and the photographs of his injuries. Moreover, the trial court itself recognized the unlawful aggression by Crisanto, although it ruled that such aggression ceased.

Second, the appellate court's statement that the injuries sustained by Apolinario were "only scratches" contradicts the evidence presented. Indeed, the Medico-Legal Report prepared by Dr. Sanchez noted that the injuries sustained by Apolinario were abrasions, which term could be synonymous to scratches. Nevertheless, it must be stressed that Dr. Sanchez clarified and was consistent in her testimony that these abrasions may have been caused not only by a blunt object, but also by a sharp object. Thus, it is possible that a knife caused Apolinario's injuries.

Third, while the CA is correct that it may be difficult for a person to mount an attack from the stairs, it is not impossible. This is especially true in this case which involves a staircase consisting of seven steps only. Further, the fact that the bullet which killed Lorico had a downward trajectory is not inconsistent with the theory of the defense. It must be recalled that Jessica testified that Lorico was one step away from their door when Apolinario shot him. On the other hand, Apolinario testified that Lorico was then at a distance of two arm's-length from them when he pulled the trigger. Taking these testimonies into consideration together with the photograph of the staircase and the apartment unit, it is safe to conclude that Lorico, at the time he was shot, was at the sixth step of the subject staircase. This is definitely at a lower level from the floor of the apartment unit which directly adjoins the seventh step of the staircase. Again, this is still consistent with the physical evidence of the prosecution.

Lastly, the CA's statement that it was highly unlikely for the victims to attack the Bayles as they were police officers is obviously fallacious. Police officers are definitely not immune from the felonious acts of the vile elements of society. Furthermore, it has not been shown that the Lampas knew the Bayles to be police officers at the time of the incident. In fact, Ricardo testified that they were not aware that the Bayles were police officers.⁸⁴

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TSN, March 14, 2005, p. 58.

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From the foregoing, the Court reiterates that although it convicted Apolinario, the trial court appears to have adopted the defense's version of the incident as its factual findings, which findings have not been sufficiently contradicted by the appellate court. As such, the said findings subsist. Thus, the Court will determine the presence or absence of the justifying circumstances claimed by Apolinario on the basis of such findings by the trial court.

The defense was able to show that Apolinario acted in self-defense and in defense of a relative.

It is settled that to prove the justifying circumstance of self-defense, the accused must establish the following requisites, to wit: (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.⁸⁵ Similarly, to prove defense of a relative, the following requisites must concur, namely: (1) unlawful aggression on the part of 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.⁸⁶

As already stated, the Court is convinced that the defense was able to prove, by clear and convincing evidence, the requisites of self-defense and defense of a relative.

The justifying circumstance of defense of a relative was present when Apolinario shot Crisanto.

The Court holds that the requisites for the justifying circumstance of defense of a relative were present when Apolinario shot Crisanto.

There was unlawful aggression on the part of Crisanto without any provocation on the part of Jessica. Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person.⁸⁷ In this case, unlawful aggression was present when Crisanto was strangling Jessica — there was an actual physical assault by Crisanto against Jessica.

⁸⁵ *People v. Aglipa*, 391 Phil. 879, 882 (2000).

⁸⁶ *Napone, Jr. v. People*, G.R. No. 193085, November 29, 2017, 847 SCRA 63, 78.

⁸⁷ *People v. Macaraig*, 810 Phil. 931, 937 (2017).

As already pointed above, this fact has been recognized by the trial court in its decision, albeit with a different conclusion, thus:

It is clear from the foregoing that at the time the accused saw his wife Jessica being strangled by Crisanto, the attention of the latter was focused on what he was doing at that precise moment. x x x While Crisanto was inceptually the aggressor, the aggression against the accused ceased to exist when the former turned his ire to Jessica. x x x Also, this momentary shift of attention to Jessica could have given the accused also an opportunity, no matter how brief, to deliberate on what action to take. While his wife was certainly exposed to danger at that point, the danger, to a certain extent, was not life-threatening. And certainly, there was no immediate or imminent danger to the person of the accused at that precise point by reason of Crisanto's momentary focus on Jessica.⁸⁸ (Emphases supplied)

At this juncture, the Court expresses its dismay on how the trial court did not consider that Apolinario was acting in defense of his wife, or that there was clearly an aggression against Jessica at that time. It must be readily observed that the trial court only discussed how there was no longer any aggression against Apolinario; there was no discussion whatsoever on the presence or absence of the circumstance of defense of a relative. Despite recognition that Crisanto strangled Jessica and that she was exposed to danger, the trial court merely dismissed the same and even contradicted itself when it stated that the strangling exposed Jessica to danger, but the danger was "not life-threatening" to "a certain extent." Perhaps the trial court was not aware that preventing a person from breathing by blocking or restricting air from flowing into the lungs through the throat could be fatal to any person. It must also be considered that Jessica was eight months pregnant at that time which would make her condition even more delicate. In any case, it is clear that there was clear and imminent danger to Jessica and the child in her womb due to Crisanto's unlawful aggression.

Further, the means employed by Apolinario to repel Crisanto's unlawful aggression against Jessica was reasonably necessary.

It is settled that reasonable necessity does not mean absolute necessity. It is not the indispensable need, but the rational necessity which the law requires.⁸⁹ Thus, reasonable necessity is satisfied when the one making the defense or repelling the attack used the weapon available to him, even if the said weapon is technically disproportionate to the weapon of the unlawful aggressor.⁹⁰

⁸⁸ *Rollo*, pp. 99-100.

⁸⁹ *Jayme v. People*, 372 Phil. 796, 803-804 (1999).

⁹⁰ *Lacson v. Court of Appeals*, 183 Phil. 145, 152-153 (1979).

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Here, Apolinario already had his service pistol in his hand when he saw his wife being strangled by Crisanto. The gun, therefore, was already available to him at that time, and he could use it to repel the danger to his wife and unborn child, as he did. It was instinct which impelled Apolinario to fire his gun in order to save his wife and to prevent further harm to their unborn child. Thus, Apolinario could not be faulted when he failed to consider other means to ward off Crisanto's assault.

The justifying circumstance of self-defense and defense of a relative were present when Apolinario shot Lorico.

The Court also rules that the requisites of the justifying circumstances of self-defense and defense of a relative were present in the killing of Lorico.

Unlawful aggression is present, not only when there is actual physical assault, but also when there is a threat to inflict real imminent injury. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury.⁹¹

In this case, there was unlawful aggression when Lorico, knife in hand, with eyes blazing, and shouting, rushed towards Apolinario and Jessica. It must be stressed that Lorico's threat to inflict harm came just moments after Apolinario was able to repel Crisanto's unlawful aggression. In fact, Jessica was then still lying on the floor and was in no position to defend herself from further unlawful assault. Thus, when Lorico appeared and was about to attack them, even ignoring his command to stop his advance, Apolinario had no reason to believe that the former was only threatening them. To his mind, the threat posed by Lorico is real and serious and he had to act swiftly in order to repel it.⁹² Clearly, there was unlawful aggression on the part of Lorico.

Likewise, contrary to the position of the trial court, Apolinario, in shooting Lorico, did not exceed the necessary force to repel the former's attack.

The determination of whether the accused exceeded the reasonable necessity of the means employed to repel unlawful aggression depends on various factors such as the nature and quality of the weapons used, the physical condition and size of the aggressor and the person defending

⁹¹ *People v. Escobal*, G.R. No. 206292, October 11, 2017, 842 SCRA 432, 445.

⁹² *People v. Viernes*, 331 Phil. 146, 159 (1996).

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himself, as well as other circumstances surrounding the particular case.⁹³ The means employed by the person invoking self-defense contemplates a rational equivalence between the means of attack and the defense. This is a matter that depends on the circumstances.⁹⁴

It must be reiterated that Apolinario and Jessica have just been through a life-threatening situation when Lorico suddenly appeared and was ready to deliver fatal blows. Jessica was in no condition to defend herself. As such, it was up to Apolinario to fend off the sudden aggression. Again, the weapon which was available to Apolinario at that time was his service pistol. In such a scenario, to insist that Apolinario could have disabled Lorico by shooting the latter's arm or leg would certainly be excessive. Such suggestion would entail for Apolinario to shoot with accuracy and good concentration, which the Court does not believe he was capable to or was in condition to do at that time. In any case, Apolinario declared that he was a police officer and ordered Lorico to stop, yet the latter still proceeded with his assault.

Lastly, there was no sufficient provocation on the part of Apolinario. It has been held that provocation is sufficient when it is proportionate to the aggression, that is, adequate enough to impel one to attack the person claiming self-defense.⁹⁵ Apolinario admitted that he cursed back at Lorico. Nevertheless, the Court is not convinced that such curses are sufficient enough for Lorico and Crisanto to invade a home and harm the people therein. Apolinario's expletives may have been offensive, but it certainly could not be considered a sufficient inducement for its recipient to act violently and attack with bladed weapons.

In any case, it must be stressed that the defense is not required to prove, with absolute certainty, the facts constituting its defense. The accused is required only to prove, by clear and convincing evidence, the justifying circumstances he has invoked.⁹⁶ Clear and convincing evidence has been described as more than mere preponderance, but the proof required is less than that required of proof beyond reasonable doubt.⁹⁷ In this regard, the Court holds that the defense was able to demonstrate that Apolinario acted in defense of a relative when he shot Crisanto. He also acted in self-defense and defense of a relative when he shot Lorico, which unfortunately resulted in the latter's death.

⁹³ *People v. Viernes*, id. at 161; *Jayme v. People*, supra note 89, at 804.

⁹⁴ *Velasquez v. People*, 807 Phil. 438, 451 (2017).

⁹⁵ Id. at 452.

⁹⁶ *POI Celso Tabobo v. People*, 811 Phil. 235, 246 (2017).

⁹⁷ *Pangasinan v. Almazora*, 762 Phil. 492, 507-508 (2015).

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WHEREFORE, the present Petition for Review on *Certiorari* is **GRANTED**. The Decision dated June 14, 2013, and the Resolution dated January 22, 2014, of the Court of Appeals in CA-G.R. CR No. 32524 are **REVERSED** and **SET ASIDE**. Petitioner PO1 Apolinario Bayle y Junio is hereby **ACQUITTED**. If detained, he is **ORDERED** immediately **RELEASED**, unless he is confined for any other lawful cause.

SO ORDERED.


JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

*Deere See
Concurring
Opinion.*


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Acting Chairperson

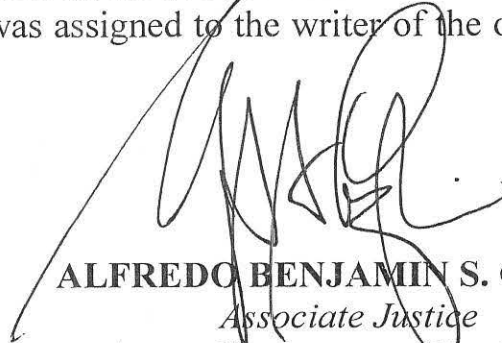

AMY C. LAZARO-JAVIER
Associate Justice


MARIO V. LOPEZ
Associate Justice


SAMUEL H. GAERLAN
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.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.



DIOSDADO M. PERALTA
Chief Justice

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