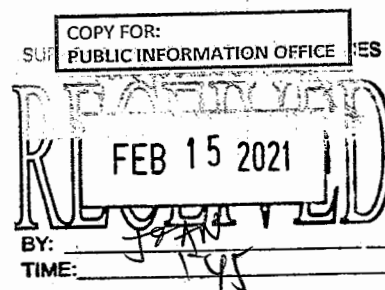




Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **July 15, 2020**, which reads as follows:

“G.R. No. 227859 – (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* v. LUPO TULIAO, *accused-appellant*). – This resolves the appeal pursuant to Section 13(c), Rule 124 of the Rules of Court, as amended, from the Decision,¹ dated April 6, 2016, of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06846. The assailed Decision affirmed the judgment of the Regional Trial Court (RTC) of Tuguegarao City, Cagayan, Branch 5, in Criminal Case No. 11447, insofar as it convicted herein Lupo Tuliao (*accused-appellant*) of the crime of Robbery with Homicide.

Accused-appellant, Nestor Merin (Merin), and Agustin Cawilan (Cawilan) were charged with the crime of Robbery with Homicide by virtue of an Information, dated September 11, 2006,² the accusatory portion of which reads:

That on or about December 4, 2005, in the Municipality of Peñablanca, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused NESTOR MERIN Y DANGUIWANG, LUPO TULIAO ALIAS APOY/DANDAN, AGUSTIN CAWILAN ALIAS GALIDONG and PETER BAKULEN armed with guns forming themselves into a band of robbers with intent to gain and by the use of force, violence, threat and intimidation enter inside the house of complainant, MR. and MRS. HERMOGENES L. ADDUN and once inside, forcibly opened a wooden cabinet, and after which, did then and there willfully, unlawfully and feloniously take, steal and carry away against the will of the owner a black leather shoulder bag containing cash money in the amount of PHP 12,000.00 belonging to the complainant, MR. and MRS. HERMOGENES L. ADDUN, to the damage and prejudice of the aforesaid owner, MR. and MRS. HERMOGENES L. ADDUN in the aforesaid amount of TWELVE THOUSAND (PHP 12,000.00) PESOS, Philippine Currency. That on the same occasion of the robbery the above-named accused likewise armed with their aforesaid firearms conspiring together and mutually helping and confederating with one

¹ Penned by Associate Justice Amy C. Lazaro-Javier (now a Member of this Court), with Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang, concurring; *rollo*, pp. 2-56.

² *Id.* at 2-3.

another, did then and there willfully, unlawfully and feloniously with intent to kill and with evident premeditation treacherously shoot HERMOGENES L. ADDUN, thereby inflicting upon him gunshot wound which caused his death.

Contrary to law.³

Pursuant to a warrant of arrest issued by the RTC, Merin, Cawilan, and herein accused-appellant were arrested in 2008; whereas, Peter Bakulen (Bakulen) remained at large.⁴

Upon arraignment, both Merin and Cawilan pleaded not guilty, whereas accused-appellant pleaded guilty.⁵

After pre-trial, trial on the merits ensued.

The prosecution presented as witnesses private complainant Lolita Bariuan Addun (Lolita), wife of the deceased Hermogenes Addun (Hermogenes); Dr. Mila F. Simangan (Dr. Simangan), Municipal Health Officer of Peñablanca, Cagayan; P/Supt. Jeremias Aglugub (P/Supt. Aglugub), Chief of Police of Peñablanca, Cagayan; and SPO2 Lorenzo Tagubay, Jr. of the Peñablanca Police Station.⁶

Their testimonies tend to establish that on December 4, 2005, at around 6 o'clock in the evening, Lolita and her husband Hermogenes were inside the kitchen in their house in Baliuag, Peñablanca, Cagayan, preparing dinner when four men, three of which were armed, suddenly entered.⁷

Lolita recognized one of the men as the accused-appellant. Lolita averred that she was sufficiently acquainted with him as used to attend the fiesta in their barangay. As for Merin and Cawilan, Lolita testified that she only learned of their names based on accused-appellant's sworn statement at the police station.⁸

Once inside, one of the men covered Lolita's mouth to prevent her from shouting. Thereafter, Lolita was ordered to lie face down on the ground as the armed men went upstairs.⁹ The men then destroyed the wooden cabinet and took the ₱12,000.00 inside it. Accused-appellant and Bakulen dragged Hermogenes outside the house, some 10 to 20 meters away. Afterwards, accused-appellant shot Hermogenes in the head. Lolita witnessed

³ Id. at 3-4.

⁴ Id. at 4-5.

⁵ Id. at 4.

⁶ Id. at 5-6, 8-9.

⁷ Id. at 6.

⁸ Id. at 6, 8.

⁹ Id. at 6-7.

the shooting while inside the house as she was seated on an elevated 2-meter flooring.¹⁰

After the armed men left, Lolita went out of their house and reported the incident to the barangay kagawad, who then informed the barangay chairperson. The barangay chairperson alerted the police.¹¹ The police, headed by P/Supt Aglugub, arrived to check the crime scene at around 12 midnight.¹²

Dr. Simangan conducted an autopsy on the body of Hermogenes and determined that the latter died of cerebral hemorrhage secondary to a gunshot wound.¹³

For its part, the defense presented the testimonies of the accused Merin and Cawilan, and that of accused-appellant.¹⁴

The testimonies of Merin and Cawilan established that they are relatives. Cawilan is the cousin of Merin's mother.¹⁵ Both Merin and Cawilan were arrested on February 2, 2006, at the latter's house. The two were brought together with accused-appellant to a police station. They both claimed that they did not know accused-appellant nor the private complainant in this case; and denied any participation in the alleged crime.¹⁶

Merin averred that he could not read as he only finished Grade 3. He asserted that he was made to sign a document without being informed of its contents and of his constitutional rights, and without the assistance of counsel. Merin claimed that he merely signed the document, which turned out to be an extrajudicial confession, on the promise that he would be released.¹⁷

Accused-appellant, admitting the crime charged, narrated that on December 4, 2005, Greg Abblao sent him, Bakulen, Lolito Tannung (Tannung), and Jeffrey Banatao (Banatao) to get bird's nest from a man named "Mr. Addun." Bakulen and Tannung entered Addun's house, while accused-appellant and Banatao stayed outside. After some time, Bakulen and Tannung came out dragging Hermogenes outside to about 20 meters away. Bakulen then entrusted the man to accused-appellant, gave the latter a gun, and returned inside the house. At that point, accused-appellant and

¹⁰ Id. at 6.

¹¹ Id. at 7.

¹² Id. at 7-8.

¹³ Id. at 9.

¹⁴ Id. at 10.

¹⁵ Id. at 12.

¹⁶ Id. at 12-14.

¹⁷ Id. at 12.

Hermogenes had an encounter. Hermogenes boxed accused-appellant, causing him to fall to the ground. When accused-appellant stood up, he shot Hermogenes.¹⁸

On May 22, 2014, the RTC rendered its Decision,¹⁹ ruling as follows:

WHEREFORE, in view of the foregoing, the court renders judgment finding the accused Nestor Merin y Danguiwan, Lupo Tuliao y Miguel, and Agustin Cawilan y Mangwagan, GUILTY beyond reasonable doubt of the crime of Robbery with Homicide and sentences them to suffer the penalty of RECLUSION PERPETUA. Said accused are further ordered to pay the heirs of Hermogenes Addun P75,000.00 as indemnity for his wrongful death; P50,000.00 as funeral expenses; P12,000.00 representing the cash taken; P200,000.00 for loss of earning capacity; and P500,000.00 as moral damages.

The said accused shall also suffer perpetual disqualification to hold public office and Civil Interdiction.

The court also directs the Philippine National Police and the National Bureau of Investigation to exert maximum effort for the arrest of Peter Bakulen of Pinukpok, Kalinga who remains at large.

In the records of this case, one Gerard Abblao of Pinukpok, Kalinga was mentioned as the mastermind of the crime charged. The court hereby refers this matter to the Provincial Prosecutor of Cagayan to determine the indictability of said Gerard Abblao.

SO ORDERED.²⁰

Merin, Cawilan, and accused-appellant filed an appeal before the CA, which rendered the herein assailed Decision,²¹ dated April 6, 2016, the dispositive portion of which reads:

ACCORDINGLY, this Court **ACQUITS** appellants **NESTOR MERIN** and **AGUSTIN CAWILAN** on ground of reasonable doubt but **AFFIRMS** the conviction of appellant **LUPO TULIAO** for robbery with homicide, **LUPO TULIAO** is further ordered to pay Lolita Bariuan Addun and the Heirs of Hermogenes Addun, the following:

1. P 12,000.00 representing the stolen cash;
2. P 50,000.00 funeral expenses;
3. P 100,000.00 civil indemnity;
4. P 100,000.00 moral damages.

The award of P200,000.00 for loss of earning capacity is deleted for lack of proof. Interest on all damages at the rate of six percent (6%) per annum shall accrue from finality of judgment until fully paid.

¹⁸ Id. at 11.

¹⁹ Rendered by Presiding Judge Jezarene C. Aquino, CA *rollo*, pp. 15-24.

²⁰ Id. at 24.

²¹ *Supra* note 1.

The Director of the Bureau of Corrections is ordered to immediately release **NESTOR MERIN** and **AGUSTIN CAWILAN**, unless they are confined for some other lawful cause; and submit to this Court his compliance within ten (10) days from notice.

SO ORDERED.²² (Emphasis in the original)

In its Decision, the CA invalidated the extrajudicial confession of Merin after finding that it was executed during a custodial investigation without Merin being afforded his constitutional rights. As such, the CA concluded that Merin's extrajudicial confession should not have been given probative value, and was inadmissible in evidence against him.²³

Further, the CA continued that the records are bereft of any other competent and independent evidence to implicate both Merin and Cawilan in the crime charged.²⁴ The CA noted that Lolita supposedly knew of the names of Merin and Cawilan from the utterances made by accused-appellant during investigation. However, there was no record of such investigation or identification by accused-appellant. On the contrary, the CA noted that accused-appellant never mentioned the names of Merin and Cawilan during his testimony in court.²⁵ There being no corroboration in Lolita's relative identification of Merin and Cawilan as the perpetrators of the crime, the CA ruled that they should be acquitted.²⁶

In the case of accused-appellant, the CA affirmed his conviction. The CA noted that by pleading self-defense, accused-appellant has the burden to prove the elements thereof by clear and convincing evidence. In this case, the CA held that accused-appellant failed to prove the element of unlawful aggression. Foremost, the CA stated that accused-appellant's testimony that Hermogenes was the one who initiated the fight was self-serving and uncorroborated. At any rate, even if it were true, the CA ruled that Hermogenes was justified in punching accused-appellant as a form of retaliation to the illegal entry; as such, the same cannot be considered as unlawful aggression.²⁷

In this appeal, accused-appellant manifested that he is adopting the facts and arguments raised in Merin's Brief before the CA.²⁸ In sum, accused-appellant submits that his act of shooting the victim is a form of self-defense. He claims that there was unlawful aggression when Hermogenes punched him thrice without any provocation on his part. Similarly, accused-appellant submits that the crime that occurred cannot be considered as provocation on his part as he was not complicit thereto. Lastly,

²² *Rollo*, pp. 55-56.

²³ *Id.* at 28-30, 32-33.

²⁴ *Id.* at 33.

²⁵ *Id.* at 39-43.

²⁶ *Id.* at 44-49.

²⁷ *Id.* at 51-52.

²⁸ *Id.* at 135-137.

accused-appellant argues that the element of reasonableness is likewise present, stating that as there lingered a possibility that Hermogenes would continue attacking him and the only feasible means possible at the time was to use his gun.²⁹

The appeal is *not* meritorious.

In this case, accused-appellant, by his plea of self-defense, admits authorship of the crime. As such, it becomes incumbent upon the accused to prove by clear and convincing evidence all the elements of self-defense,³⁰ namely: (1) unlawful aggression, (2) reasonable necessity of the means employed to prevent or repel it, and (3) lack of sufficient provocation on the part of the person defending himself.³¹ Of these elements, unlawful aggression is the most important; absent it, there can be no self-defense, whether complete or incomplete. This is because the two other elements would have no factual or legal bases without any unlawful aggression to prevent or repel.³²

In determining whether unlawful aggression exists, the aggression from the victim must put in actual peril the life or personal safety of the person defending himself. It thus requires the concurrence of three elements: (1) a physical or material attack or assault; (2) the attack or assault must be actual or imminent; and (3) the attack or assault must be unlawful.³³

Preliminarily, the Court finds that accused-appellant's testimony is self-serving and uncorroborated by other evidence, and is therefore not worthy of credit and belief. Other than his bare assertion, accused-appellant failed to present proof or at least allege the physical manifestations brought about by the said attack.

Further, even if the Court were to assume that punches were indeed thrown by Hermogenes, the act is not unlawful. It must be noted that accused-appellant admits to the commission of the robbery. While he claims that he was not complicit thereto during its preliminary or planning stages, he nonetheless remained in the scene during its commission and agreed to take the gun and guard Hermogenes after the latter has been dragged outside of the house where the crime was committed. This enabled the rest of the accused to ransack the house and fulfill their criminal design. Through his acts, therefore, accused-appellant is deemed to have acted in implied conspiracy that justifies the imposition of a joint criminal responsibility.³⁴

²⁹ Id. at 135-137.

³⁰ *People v. Dulin*, 762 Phil. 24, 36 (2015).

³¹ REVISED PENAL CODE, Article 11(1).

³² *People v. Dulin*, supra.

³³ Id.

³⁴ *People v. De Leon*, 608 Phil. 701, 718 (2009).

To be a conspirator, one need not participate in every detail of the execution, nor does one need to have knowledge of the exact part to be performed by the others. A conspiracy exists for as long as the acts of each of the conspirators constitute a whole collective effort to achieve their common criminal objective. The exact participation of each of them is irrelevant as the act of one is regarded as the act of all.³⁵

After he was dragged outside of his house and entrusted to accused-appellant, Hermogenes was justified in throwing punches against accused-appellant as a means to defend his personal safety and security as well as that of his household. Consequently, as the act of throwing fists was borne out of the crime that was committed against spouses Addun, accused-appellant did not act in order to defend himself or to repel any attack, but to inflict injury on Hermogenes.³⁶

Moreover, assuming further that such attack were unlawful, accused-appellant failed to show in his narration that at the time he shot Hermogenes, the threat still existed or was imminent. In contrast, when accused-appellant fell to the ground, the attack had already ceased. Armed with a gun, the disparity between accused-appellant and Hermogenes was indisputable. Rather than Hermogenes, accused-appellant was actually the one who presented a threat to the former.

As accused-appellant failed to prove by clear and convincing evidence the element of unlawful aggression, there is no more reason to discuss the other elements, as the plea of self-defense has no leg to stand on.

Anent the penalty, under Article 294, paragraph 1, of the RPC, the crime of Robbery with Homicide is punishable with *reclusion perpetua* to death. There being no aggravating or mitigating circumstance attendant, the CA and the RTC were correct in imposing the penalty of *reclusion perpetua*.

On the award of damages, the Court finds that the CA's imposition should be modified in view of the ruling in *People v. Jugueta*,³⁷ which provides that for the special complex crime of Robbery with Homicide, the penalty imposed is *reclusion perpetua*, civil indemnity, moral damages, and exemplary damages shall be at ₱75,000.00 each. This shall be in addition to the ₱12,000.00 representing the amount taken, which shall take the form of actual damages. Likewise, as duly substantiated during trial, the amount of ₱50,000.00 as funeral expenses is in order.

³⁵ Id.

³⁶ *People v. Dulin*, supra note 30.

³⁷ 783 Phil. 806 (2016).

WHEREFORE, in view of the foregoing, the appeal is hereby **DISMISSED**. Accordingly, the April 6, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06846 convicting accused-appellant Lupo Tuliao of the crime of Robbery with Homicide, as defined and penalized under Article 294, paragraph 1 of the Revised Penal Code, is hereby **AFFIRMED with MODIFICATION**. In addition, in accordance with recent jurisprudence,³⁸ he is ordered to pay Lolita Bariuan Addun and the heirs of Hermogenes Addun, the amounts of ₱12,000.00 as actual damages, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱50,000.00 as funeral expenses. All monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Resolution until fully paid.³⁹

SO ORDERED.”

By authority of the Court:

Mis PDC Batt
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Division Clerk of Court
GER
11/12/20

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COURT OF APPEALS
CA G.R. CR HC No. 06846
1000 Manila

The Presiding Judge
REGIONAL TRIAL COURT
Branch 5, 3500 Tuguegarao City
(Crim. Case No. 11447)

The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Mr. Lupo Tuliao
c/o The Superintendent
New Bilibid Prison
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³⁸ Id.

³⁹ *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).