



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Baguio City

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **25 April 2022** which reads as follows:*

“G.R. No. 230686 (*Chito Edep v. People of the Philippines*). — This Petition for Review¹ under Rule 45 seeks the reversal of the Court of Appeals (CA) September 30, 2016 Decision² and February 10, 2017 Resolution in CA-G.R. CR No. 38044,³ which affirmed with modification the July 15, 2015 Joint Decision⁴ of the Regional Trial Court (RTC), Fourth Judicial Region, Branch 52, Puerto Princesa City, Palawan which found accused-appellant Chito Edep (Edep) guilty of the crime of Homicide.

Two Informations were filed against Edep and his co-accused which read as follows:

Criminal Case No. 12804 for Murder

That on or about the 2nd day of November 1995, in the evening, at Barangay Poblacion, Municipality of Taytay, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating together and mutually helping one another, with evident premeditation, treachery and abuse of superior strength, with intent to kill and while armed with deadly weapons, did then and there willfully, unlawfully and feloniously attack, assault, club and shoot with their deadly weapons one DIOMEDES SAQUILLO, hitting him in the different vital parts of his body and inflicting upon him gunshot wounds which cause[d] cardio respiratory arrest which was the direct and immediate cause of his death shortly thereafter.

CONTRARY TO LAW.⁵

¹ *Rollo*, pp. 11-25.

² *Id.* at 31-48. Penned by Associate Justice Agnes Reyes-Carpio and concurred in by Presiding Justice Andres B. Reyes, Jr. (now a retired Member of the Court) and Associate Justice Romeo F. Barza.

³ *Id.* at 26-30. Penned by Presiding Justice Andres B. Reyes, Jr. (now a retired Member of the Court) and concurred in by Associate Justices Romeo F. Barza and Franchito N. Diamante.

⁴ *Id.* at 49-74. Penned by Judge Angelo R. Arizala.

⁵ Records, p. 1.

RS/A

Criminal Case No. 12870 for Frustrated Murder

That on or about the 2nd day of November 1995, at more or less 9:00 o'clock in the evening in front of the Catholic Convent at Barangay Poblacion, Municipality of Taytay, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill and with treachery and taking advantage of superior strength, while armed with deadly weapons, to wit: a club, stainless shaft and knife, conspiring, confederating together and helping one another, did then and there, willfully, unlawfully and feloniously attack, assault and maul one ADOLFO MONARES, thereby inflicting upon him lacerated wounds, contusion and hematomas on his face, which would ordinarily cause the death of said Adolfo Monares thus performing all the acts of execution which would have produced the crime of Murder as a consequence but nevertheless did not produce it by reason of causes independent of the will of the accused, that is, by the timely and able medical assistance rendered to the said victim at the Taytay District Hospital, Taytay, Palawan, which prevented the latter's death.⁶

Upon arraignment, Edep and his co-accused, Virgilio Revillas, Jr. (Revillas) and Edgar dela Cruz (dela Cruz), pleaded not guilty to the crimes charged. Co-accused Alex Capa (Capa), on the other hand, remained at large.⁷

Trial on the merits followed.

Version of the Prosecution

On November 2, 1995, at around 9:00 p.m., a gun burst was heard coming from the Philippine National Police (PNP) waiting shed near the Catholic church in Taytay, Palawan. Senior Police Officer 4 Miguel P. Macolor (SPO4 Macolor), the assigned investigator at Taytay Municipal Police Station, was at the police station at that time with Senior Police Officer 1 Juanito G. Gan (SPO1 Gan), and Police Officer 3 Dioscoro A. Gentolio (PO3 Gentolio). They immediately proceeded to the area where the gun burst came from, and saw two persons sprawled on the ground and soaked in blood, later identified as Diomedes Saquillo (Saquillo) and Adolfo Monares (Monares). Upon their approach, Edep immediately raised his hand and said, "*Surrender ako.*" Edep then told SPO4 Macolor and SPO1 Gan that the gun was in the possession of Revillas, his brother-in-law. SPO4 Macolor and Edep then went to Revillas' house to recover the gun. However, Revillas was not around. In the meantime, SPO1 Gan stayed behind at the crime scene while PO3 Gentolio brought Saquillo and Monares, both unconscious at that time, to the hospital.⁸

At the Taytay District Hospital, Dr. Monasusan Bacongallo (Dr. Bacongallo) immediately attended to Saquillo who was already dead upon arrival. Based on her initial findings, Saquillo suffered three gunshot wounds, and the cause of his death was cardio respiratory arrest hemorrhagic shock, gunshot wound. The doctor was able to recover one slug from the victim's body

⁶ Id. at 395.

⁷ Id. at 40.

⁸ *Rollo*, pp. 32-33.

which she gave to the police. She opined that the relative position of the assailant and the victim was that of face-to-face encounter.⁹

Dr. Bacongallo also attended to Monares. She testified that there were three lacerated wound contusions and hematoma on Monares' face, particularly the left cheek and left nostril, to the lower eyelids of the eye, which could have been caused by a blunt weapon, but these were not fatal injuries and could heal in less than nine days.¹⁰

A few days after the incident, co-accused Revillas and Dela Cruz went to the police station to surrender. After SPO4 Macolor took the testimonies of the witnesses, criminal charges were filed against all the accused.

Prosecution witness Protacio Taganas @ Taruk (Taganas) and Monares gave their versions of the incident.

On November 2, 1995 at around 9:30 p.m., Edep, Saquillo, Monares, Tagas, and Jessie Roxas (Roxas) were walking home near the port of Taytay, Palawan after loading some cargo on the pump boat M/V Dionemir. Upon reaching the outpost opposite the church, a gun burst echoed. Taganas, who was walking ahead of the group, looked back at the place where the gunshot was heard, and instantly saw Edep shoot Saquillo two more times. Monares also looked at the location where the gun shot came from, and saw Saquillo fall to the ground. Edep fired two more shots at the victim, simultaneously uttering, "*Hindi ako papayag na ikaw ang yayaman sa Taytay.*" Edep clubbed Saquillo with a nightstick shooting the victim.¹¹

Monares then approached Saquillo and embraced him to protect him from further harm. Immediately, co-accused Revillas held Monares and dragged him three meters away from Saquillo, towards the middle of the road. Revillas then also clubbed Monares with a nightstick. Dela Cruz and Capa also mauled Monares. After being beaten twice on the face near his eyes, Monares lost consciousness. Taganas and Roxas saw all these but were too dumbstruck to help. Not long afterwards, police officers arrived at the crime scene. Edep voluntarily surrendered himself. Revillas, Dela Cruz and Capa managed to run away. According to the prosecution witnesses, there was no grudge or any prior misunderstanding between the Saquillo and Monares, on one hand, and the accused, on the other, before the incident.¹²

Version of the Defense

The defense alleged that on the night of November 2, 1995, Revillas was at the port of Taytay, Palawan with Dela Cruz, Carmen Dela Torre, and Alma

⁹ Id. at 33.

¹⁰ Id. at 52.

¹¹ Id. at 53.

¹² Id.

Revillas. Around 8:30 p.m., they decided to leave to proceed to Sylvio Nalica's store located in front of the Catholic church. While at the store, Saquillo, Monares, and Taganas arrived. Subsequently, Saquillo and Revillas got involved in a scuffle, where Saquillo held Revillas' shirt while Taganas boxed Revillas who was hit on the jaw and almost fell down.¹³

Edep, the *Barangay Kagawad* and Chairman of the Peace and Order and Security of their barangay at that time, noticed the commotion from where he was at the tanod outpost. He saw Taganas box Revillas and upon arriving at the scene, he saw Revillas about to hit back at his attackers. At that moment, Saquillo who came to help Taganas, pulled out a stainless rod and was poised to hit Revillas. Edep came to Revillas' rescue and tried to stop the brawl, to no avail. Saquillo engaged Revillas in a heated argument, accusing him of boxing his companions the night before.¹⁴

When Revillas was about to attack the victim, Saquillo drew out a gun from his waist but was not able to fire it as he was stopped by Edep. Edep hit Saquillo's hand with a nightstick, and the gun fell to the ground. When Edep got hold of the gun, Saquillo lunged to attack him using the stainless rod. Edep then fired the gun at the victim, unmindful of the body part he was hitting. Despite the first shot, the victim continued to approach him with the stainless rod thus, Edep had no choice but to fire twice at the victim. Not long afterwards, Saquillo's son arrived, embraced the victim's body, then left with the firearm. Edep moved away from the scene and along the way, met some police officers to whom he voluntarily surrendered. After three days, he was brought to Puerto Princesa City for the filing of cases against him.¹⁵

Ruling of the Regional Trial Court

In a Joint Decision¹⁶ of Criminal Case Nos. 12804 and 12870, the RTC found Edep guilty beyond reasonable doubt of Homicide in Criminal Case No. 12804, while co-accused Revillas and Dela Cruz were found guilty beyond reasonable doubt of the felony of Attempted Homicide in the second case. Edep was acquitted of the felony of Attempted Homicide.¹⁷

In so ruling, the RTC held that the killing of Saquillo was not attended by the qualifying circumstances of evident premeditation, treachery, and abuse of superior strength.¹⁸ Thus:

There is no evidence presented by the prosecution that proves the determination of the plan by accused Edep to commit the crime, or any overt act on [his] part that shows he has clung to his determination to commit the crime or a sufficient period of time for him to reflect on the consequences of his planned

¹³ Id. at 53-54.

¹⁴ Id. at 54.

¹⁵ Id.

¹⁶ Id. at 49-74.

¹⁷ Id. at 73-74.

¹⁸ Id. at 57-63.

act. The incident happened instantaneously. The Court, therefore, is constrained to brush aside the allegation of the presence of the qualifying circumstance of evident premeditation.

Anent the qualifying circumstance of treachery, x x x

x x x x

The testimonies of the witnesses in this case satisfy the requirements laid down by law, as accused Edep and the victim Saquillo were proved to be facing each other when the incident happened. x x x

x x x x

Finally, as to the qualifying circumstance of taking advantage of superior strength, x x x

x x x x

The prosecution in this case failed to adduce evidence relative to the disparity in age, size and strength, or force, between accused Edep and the victim except for the showing that the accused used a firearm in killing the victim. Neither did the prosecution present proof to show that the victim suffered from an inferior physical condition from which the circumstance can be inferred. In fact, there is evidence that at the time of the incident the victim was holding a pipe and he tried to club accused Edep with it. Hence, this Court rules out the presence of abuse of superior strength as a qualifying circumstance.¹⁹

Thus, the RTC held that Edep should only be liable for the felony of Homicide.²⁰

In Criminal Case No. 12870, the RTC ruled that all the accused cannot be held liable for Frustrated Murder as the alleged aggravating circumstances of treachery and abuse of superior strength were likewise not proven. Thus, they were held liable for the felony of Attempted Homicide. However, Edep was not proven to be in conspiracy with them, thus, he was not found guilty of the crime.²¹

Most importantly, the RTC found that Edep did not sufficiently establish self-defense as a justifying circumstance as he failed to prove unlawful aggression on the part of the victim.²² The RTC ruled:

For one, the victim suffered three (3) gunshot wounds, a laceration, multiple abrasions and hematomas that belie the claim of unlawful aggression on the part of the victim. It has been ruled by the Supreme Court that three (3) stab wound, two of which were fatal, and one incised wound disprove any claim of self-defense. For another, accused Edep never surrendered the gun used in killing the victim to the police. Such act is not consistent with the plea of self-defense. x x

¹⁹ Id. at 59-60 and 62-63.

²⁰ Id. at 73.

²¹ Id. at 66-72.

²² Id. at 65-66.

x Lastly, accused Edep testified that after the victim lost possession of the gun to him, the victim drew out from his waist [a] stainless rod which the latter threatened him with unlawful aggression. However, the victim's ownership of the stainless rod was not established by the said accused. x x x [T]he police officers never knew the person from whom the same had been recovered x x x:²³

The dispositive portion of the RTC Joint Decision thus reads:

WHEREFORE, PREMISES CONSIDERED, this Court finds:

1. Accused Chito Edep GUILTY beyond reasonable doubt of the felony of Homicide in Criminal Case No. 12804 and is hereby sentenced to suffer the indeterminate penalty of imprisonment of 6 years and 1 day of *prision mayor* as minimum to 12 years and 1 day of *reclusion temporal*, as maximum, and is hereby ORDERED to PAY the heirs of Diomedes Saquillo the sum of P50,000.00 as indemnity *ex delicto*. Considering that the accused Chito Edep was detained at the Provincial Jail of Palawan from January 18, 1996 to May 25, 1998, his preventive imprisonment shall be credited in his favor. His co-accused Virgilio Revillas, Jr. and Edgar de la Cruz are ACQUITTED of the offense charged.

2. Accused Virgilio Revillas, Jr. and Edgar de la Cruz GUILTY beyond reasonable [doubt] of the felony of Attempted Homicide in Criminal Case No. 12870 and are hereby SENTENCED to suffer the indeterminate penalty of imprisonment of 6 months of *arresto mayor* as minimum to 4 years and 2 months of *prision correccional*, as maximum. Considering that the accused Virgilio Revillas, Jr. and Edgar dela Cruz were detained at the Provincial Jail of Palawan from January 18, 1996 to December 22, 1999 and May 19, 1999 respectively, their preventive imprisonment shall be credited in his favor. Their co-accused Chito Edep is hereby ACQUITTED of the offense charged.

3. The bailbond posted for the provisional liberties of accused Chito Edep covered by Certificate of Title No. E-11717 in the name of Ma. Elena Revillas and the bailbond posted by accused Edgar Dela Cruz covered by Transfer Certificate Title No. 19340 in the name of Valentine Miguel are hereby cancelled and released to the bondsman. Far Eastern Surety and Insurance Company is released of its duties and responsibilities as bondsman of accused Virgilio Revillas for Criminal Case Nos. 12804 and 12870. The Registrar of Deeds for Puerto Princesa City and the Province of Palawan are hereby ordered to cancel the respective annotations in the Certificates of Title.

4. Considering that accused Alex Capa remained at large to date let the Warrant for his arrest be issued for his arrest. Pending his arrest, let the records of this case be forwarded to the archives subject to revival upon orders of this Court.

IT IS SO ORDERED.²⁴

²³ Id. at 65.

²⁴ Id. at 73-74.

Ruling of the Court of Appeals

Edep brought an appeal to the CA, raising the issue that the RTC erred in not appreciating the attending circumstance of self-defense, which led to the death of the victim, and which should absolve him from criminal liability.²⁵

Affirming the findings of the RTC, the CA held that the nature, location and number of wounds inflicted on the victim belies Edep's claim of self-defense. Likewise, Edep's plea of self-defense was not corroborated by independent and competent evidence. Finally, the condition *sine qua non* of the presence of unlawful aggression committed by the victim was no longer present when Edep supposedly defended himself.²⁶

However, the CA appreciated two other mitigating circumstances, namely voluntary surrender and sufficient provocation or threat on the part of the victim.²⁷

Thus, in view of the attending circumstances, the CA sentenced Edep to imprisonment of two (2) years and four (4) months of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum. The dispositive portion of the CA Decision is as follows:

WHEREFORE, premises considered, the Joint Decision of the court *a quo* is AFFIRMED with MODIFICATION to the effect that the penalty to be imposed upon accused-appellant, Chito Edep, after appreciating the mitigating circumstances of sufficient provocation or threat on the part of the victim and voluntary surrender, is imprisonment of two (2) years and four (4) months of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum. Accused-appellant is also hereby ORDERED to pay the heirs of Diomedes Saquillo the amounts of Seventy-Five Thousand Pesos (P75,000.00) as civil indemnity and Seventy-Five Thousand Pesos (P75,000.00) as moral damages.

SO ORDERED.²⁸

The CA denied Edep's Motion for Reconsideration in a Resolution²⁹ dated February 10, 2017.

Issues

Thus, Edep brought this Petition for Review on *Certiorari*³⁰ under Rule 45 of the Rules of Court before this Court, raising the following issues:

²⁵ Id. at 37.

²⁶ Id. at 37-45.

²⁷ Id. at 45-47.

²⁸ Id. at 47.

²⁹ Id. at 26-30.

³⁰ Id. at 11-24.

I. The lower court and the Court of Appeals erred in not appreciating the attending circumstances which led to the death of the victim as self-defense on the part of accused-appellant.

II. The Court of Appeals erred when it declared that the element of unlawful aggression on the part of the victim was no longer present when the accused-appellant shot him.

III. That the accused-appellant's plea of self-defense is not corroborated by independent and competent evidence.³¹

Our Ruling

The Petition lacks merit.

It has been consistently ruled that self-defense is an affirmative allegation, and offers exculpation from liability for crimes, only if satisfactorily proven.³² However, to invoke self-defense, the burden is placed on the accused to prove its elements clearly and convincingly.³³ Article 11 of the RPC lists down these elements, namely: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed by the accused to repel it; and (c) lack of sufficient provocation on the part of the person defending himself. While all three elements must concur, self-defense relies first and foremost on the proof of unlawful aggression on the part of the victim. If no unlawful aggression is proved, no self-defense may be successfully pleaded.³⁴

Here, the Court agrees with the findings of the lower courts that Edep failed to discharge the burden of proving unlawful aggression. Edep's version of the events – that he merely shot the victim when the latter was about to hit him with a stainless rod – was not only uncorroborated, it was also not accorded credence by the RTC. On the other hand, the eyewitnesses' testimonies for the prosecution were positive, clear, and categorical, to wit:

Carmen Dela Torre

Q: And upon reaching the place of Sylvio Nalica, was there an unusual incident that happened?

A: Yes, Sir.

Q: Can you tell the honorable Court what was that unusual incident that happened?

A: Diomedes Saquillo came with two companions asking the owner of the store of Sylvio Nalica who boxed him the previous night.

x x x x

Q: After that, what happened next?

A: They went inside the place of 'little Tondo.'

³¹ Id. at 17.

³² *People v. Pereira*, G.R. No. 220749, January 20, 2021.

³³ Id.

³⁴ Id., citing *People v. Gutierrez*, 625 Phil. 471, 481 (2010).

Q: How far is that 'little Tondo' from the store of Sylvio Nalica?

A: More or less 15 meters.

Q: Did the group of Diomedes Saquillo return back to the store of Sylvio Nalica?

A: Yes, Sir?

Q: After they return back to the store of Sylvio Nalica, what happened next?

A: After they return from 'little Tondo' to the store of Sylvio Nalica, Tarok boxed [Virgilio] Revillas, Jr.

x x x x

Q: After Tarok boxed Virgilio Revillas, Jr., what happened to Virgilio Revillas, Jr.?

A: Virgilio Revillas, Jr. tried to box Tarok when Diomedes Saquillo came, he pulled out a stainless pipe and [was] in the act of hitting Virgilio Revillas, Jr.

Q: [Was] Diomedes Saquillo able to hit Virgilio Revillas, Jr. with that pipe?

A: No, Sir.

Q: Why?

A: Because Kagawad Chito Edep arrived.

x x x x

Q: When Kagawad Chito Edep arrived, what did he do?

A: He told Diomedes Saquillo to settle the problem in the police station.

Q: Did Diomedes Saquillo listen?

A: No, Sir. Diomedes Saquillo and Virgilio Revillas had heated arguments.

x x x x

Q: When Diomedes Saquillo did not listen to Chito Edep, what happened next?

A: Diomedes Saquillo told Chito Edep you are only a Kagawad, *akala mo kung sino kang paawat-awat dito*.

Q: After that, what happened next?

A: Diomedes Saquillo said, *patayan na lang* and pulled out a gun from his waist.

Q: After Diomedes Saquillo pulled out a gun, what happened next?

A: He pointed the gun to Kagawad Chito Edep.

Q: When Diomedes Saquillo pointed the gun to Chito Edep, what did Chito Edep do?

A: He immediately grab[bed] the gun. They grappled position (sic) of the gun.

Q: What happened next after they grappled [for] position (sic) of the gun?

A: While they were grappling position (sic) of the gun I heard a gun burst.

Q: How many gun burst?

A: Three.

Q: For how long did Chito Edep and Diomedes Saquillo grapple for the gun?

A: Twenty to thirty seconds.

Q: What is the interval of the first gun burst to the second blast?

A: Two to three seconds.

Q: How about the time interval of the second gun blast to the third blast?

A: More or less 5 seconds.

Q: What is your distance from them?

A: 5 meters.

Q: After you heard three gun blast[s], what did you do?

A: I ran towards the store of Sylvio Nalica.³⁵

George Aguilar

Q: Mr. witness, could you remember where were you in the evening of November 2, 1995?

A: Yes, sir.

Q: Where were you at that time?

A: I was at the Basketball Court of Taytay, Palawan, sir.

x x x x

Q: After playing basketball in the plaza of Poblacion, Taytay, Palawan, where did you proceed?

A: I went home, sir.

Q: Did you reach home immediately at that time?

A: No, sir.

Q: Why did you not reach home immediately at that time, Mr. Witness?

A: Because I witnessed an incident, a trouble, sir.

Q: What was that incident or trouble that you saw?

A: I saw Diomedes Saquillo holding the shirt of Virgilio Revillas.

x x x x

Q: After you saw Diomedes Saquillo [collared] Virgilio Revillas, what happened next, Mr. Witness?

A: Suddenly he was boxed by a person named alias Tarok.

x x x x

Q: Then after that, what happened next, Mr. Witness?

A: I saw Diomedes Saquillo [draw] a gun.

³⁵ TSN, June 6, 2005, pp. 4-8.

Q: What kind of gun is that, Mr. Witness?

A: It is just a short one.

Q: After that, what happened next, Mr. Witness?

A: Diomedes Saquillo and Kgd. Chito Edep grappled for the possession of the gun, sir.

Q: And after that, what happened?

A: While grappling for the possession of the gun, the gun suddenly fired and exploded.

Q: When you heard the gun blast, what did you do, Mr. Witness?

A: I ran away towards home, sir.

Q: Mr. Witness, how many gun blasts did you hear at that time?

A: When I heard the first gun shot that was the time that I ran away and while running away I still heard two gun shots, sir.

Q: Mr. Witness, what was the interval of the first blast to the second blast?

A: Approximately the second one was for a half minute.

Q: How about the interval of the second gun blast to the third gun blast?

A: More or less one (1) minute, sir.³⁶

Clearly, the testimonies of the different eyewitnesses show that Edep was not at a disadvantage when he was defending himself from the attack coming from the victim. In fact, the eyewitnesses stated that Edep and the victim were grappling for the possession of the gun and heard three gunshots afterwards. Edep could not have been defending himself against the victim's unlawful aggression, because unlawful aggression presupposes an actual, sudden, and unexpected attack or imminent danger, and not just a threatening or intimidating attitude.³⁷ For a person to be considered the unlawful aggressor, he must be shown to have exhibited external acts clearly showing his intent to cause and commit harm to the other.³⁸ On the other hand, the person attacked must be confronted by a real threat on his life and limb; and the peril sought to be avoided is imminent and actual, not merely imaginary.³⁹

In this case, the external acts of the victim, the supposed unlawful aggressor, could have been with an intent to cause and commit harm to Edep, the supposed person attacked. However, as soon as Edep got hold of the gun, the real threat to his life and limb disappeared. Self-defense could no longer be invoked because the unlawful aggression ceased. Edep had no right to kill or wound the former aggressor, otherwise, retaliation and not self-defense is committed.⁴⁰

³⁶ TSN, December 13, 2004, pp. 3-7.

³⁷ *Razon v. People*, 552 Phil. 359, 374 (2007).

³⁸ *Id.*

³⁹ *People v. Taguibao*, G.R. No. 218080, October 5, 2020, citing *Dela Cruz v. People*, 747 Phil. 376, 391-392 (2014).

⁴⁰ *People v. Dela Peña*, G.R. No. 238120, February 12, 2020.

Furthermore, the findings⁴¹ of the attending doctor – that the victim suffered three gunshot wounds, and the face-to-face position of the assailant and the victim– belie the assertion of self-defense. If Edep just wanted to defend himself, it certainly defies reason why he had to fire three times. Indeed, the Court agrees with the CA that the nature, number, and location of the wounds sustained by the victim belie the assertion of self-defense since the gravity of said wounds is indicative of a determined effort to kill and not just defend.⁴²

The credibility of the prosecution witnesses had been weighed by the trial court, and it found their testimonies to be more convincing. As a rule, the appellate court gives full weight and respect to the determination by the trial court of the credibility of witnesses, since the trial judge has the best opportunity to observe their demeanor.⁴³ While this rule admits of exceptions, none of these obtains in the case at bar.

The lower courts were, therefore, correct in rejecting Edep's plea of self-defense.

As to the mitigating circumstances of sufficient provocation or threat on the part of Saquillo and voluntary surrender by Edep, the Court agrees with the CA that these must be appreciated. The CA correctly held that:

Provocation is defined to be any unjust or improper conduct or act of the offended party, capable of exciting, inciting or irritating anyone. In order to be mitigating, provocation must be sufficient and should immediately precede the act. That the provocation must immediately precede the act means that there should not be any interval of time between the provocation by the offended party and the commission of the crime by the person provoked.

In the present case, the victim's display of rude and disrespectful behavior, which immediately preceded the acts complained of, constituted sufficient provocation. Accused-appellant, a *barangay kagawad*, could have certainly felt irritated, disrespected and even insulted by the victim who, despite serious efforts by the accused-appellant to diffuse the tension between the parties, still refused to calm down and even threatened the said lawman with a gun. Thus, We have to appreciate in accused-appellant's favor the mitigating circumstance of sufficient provocation or threat on the part of the victim.

Meanwhile, the fact that accused-appellant voluntarily surrendered to the police officers immediately after the subject incident is not disputed, thereby entitling him to another mitigating circumstance.⁴⁴

Although the victim's acts of disrespecting and even insulting Edep may not be regarded as unlawful aggression, admittedly, however, such deeds were vexatious and improper, enough to incite Edep into anger. It is understandable

⁴¹ *Rollo*, p. 33.

⁴² *Tarapen v. People*, 585 Phil. 568, 594 (2008).

⁴³ *People v. Dela Rosa*, G.R. No. 227880, November 6, 2019.

⁴⁴ *Rollo*, pp. 45-46.

that Edep was stirred to rage because despite serious efforts to diffuse the tension, the victim refused to calm down and even threatened Edep with a gun.

In *Miranda v. People*,⁴⁵ the Court held that while an act cannot be considered an unlawful aggression for the purpose of self-defense, the same act may be regarded as sufficient provocation for the purpose of mitigating the crime.⁴⁶ “As a mitigating circumstance, sufficient provocation is any unjust or improper conduct or act of the victim adequate enough to excite a person to commit a wrong, which is accordingly proportionate in gravity.”⁴⁷ The Court has consistently held that although there may have been no unlawful aggression on the part of the victim, if the latter was nonetheless deemed to have given sufficient provocation, then the accused’s liability shall be mitigated.⁴⁸

Meanwhile, the mitigating circumstance of voluntary surrender should also be appreciated in Edep’s favor because he met the following requirements, to wit: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter’s agent; and (3) the surrender is voluntary.⁴⁹

This Court finds, as the CA did, that Edep’s voluntary surrender should be credited. The facts clearly show that he was not arrested; he surrendered to police officers; and he did so voluntarily.

Finally, as to the penalty, under Article 249⁵⁰ of the Revised Penal Code (RPC), the penalty for Homicide is *reclusion temporal*. In this case, the CA appreciated two mitigating circumstances and no aggravating circumstance, thus, imposed the penalty next lower than *reclusion temporal*, which is *prision mayor*, pursuant to Article 64 (5)⁵¹ of the RPC. Furthermore, the Court shall apply the Indeterminate Sentence Law, which provides that the penalty imposable should be an indeterminate penalty whose minimum term should be within the range of the penalty next lower in degree, which is *prision correccional* in its medium period, or two (2) years, four (4) months and one (1) day to four (4) years and two (2) months, and whose maximum term should

⁴⁵ G.R. No. 234528, January 23, 2019, citing *Gotis v. People*, 559 Phil. 843, 850 (2007).

⁴⁶ *Id.*

⁴⁷ *Id.*, citing L. Reyes, *The Revised Penal Code Book One* 265 (13th ed., 1993), 264-265.

⁴⁸ *Gotis v. People*, 559 Phil. 843, 850-851 (2007), citing *Romera v. People*, 478 Phil. 606, 612-613 (2004); *Pepito v. Court of Appeals*, 369 Phil. 378, 396 (1999).

⁴⁹ *People v. Doca*, G.R. No. 233479, October 16, 2019.

⁵⁰ Article 249. *Homicide*. – Any person who, not falling within the provisions of article 246 shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

⁵¹ Article 64. Rules for the Application of Penalties Which Contain Three Periods. – In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of article 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

x x x x

5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.

x x x x

be the proper period of *prision mayor* in its medium period, or eight (8) years and one (1) day to ten (10) years.

Considering that the penalty imposed by the CA lacks the one (1) day period of *prision correccional* in its minimum period, and the one (1) day period of *prision mayor* in its medium period, the Court modifies the penalty to imprisonment of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

To conform with jurisprudence,⁵² Edep should pay the heirs of the victim the amounts of ₱50,000.00 as moral damages, ₱50,000.00 as civil indemnity, and ₱50,000.00 as temperate damages in lieu of actual damages. Interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from the date of finality of this Resolution until fully paid.⁵³

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The September 30, 2016 Decision and February 10, 2017 Resolution of the Court of Appeals in CA-G.R. CR No. 38044 are **AFFIRMED** with **MODIFICATION** in that petitioner Chito Edep is sentenced so suffer the indeterminate penalty of imprisonment of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum, and to pay the heirs of Diomedes Saquillo ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as temperate damages. Interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from the date of finality of this Resolution until fully paid.

SO ORDERED." (*Perlas-Bernabe, S.A.J., on official leave; Hernando, J., Acting Chairperson per Special Order No. 2887 dated April 8, 2022.*)

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court by *5/17*

18 MAY 2022

⁵² *People v. Jugueta*, 783 Phil. 806 (2016).

⁵³ *Id.* at 846.

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Puerto Princesa City, Palawan

(Crim. Case No. 12804 and 12870)

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*with copy of CA Decision dated 30 September 2016

Please notify the Court of any change in your address.

GR230686. 04/25/2022(145)URES