

BERNARDO LACANILAO, PETITIONER, VS. HON. COURT OF APPEALS, RESPONDENT.

G.R. No. L-34940. June 27, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The sole question in this petition which calls for our exercise of the power of judicial review, is one of law, which is: When the decision finds in favor of the accused the circumstance of incomplete fulfillment of duty or lawful exercise of right, would Article 69 of the Revised Penal Code apply, thereby resulting in the lowering of the penalty by one or two degrees?

The Court of First Instance of Manila[1] found the petitioner, a policeman, guilty of homicide for the death of one Ceferino Erese, and was sentenced to an indeterminate penalty of six years and one day of prision mayor, as the minimum, to fourteen years, eight months, and one day of reclusion temporal, as the maximum, to indemnify the heirs of the victim in the amount of P20,000.00, and to pay the costs. The petitioner subsequently appealed to the Court of Appeals which rendered a decision, the dispositive portion of which reads:

WHEREFORE, with the modification that appellant is hereby sentenced to the indeterminate penalty of six (6) years and one (1) day of prision mayor, as the minimum, to twelve years and one (1) day of reclusion temporal, as the maximum, the appealed decision is hereby affirmed in all other respects, with costs against appellant.[2]

The petition is impressed with merit.

Indisputably, the Court of Appeals found that the accused, the petitioner herein, acted in the performance of a duty but that the shooting of the victim was not the necessary consequence of the due performance thereof, therefore, crediting to him the mitigating circumstance consisting of the incomplete justifying circumstance of fulfillment of duty. In the words of the respondent Court:

While appellant is to be commended for responding to the call of duty when he tried to stop the victim and the latter's companions from their drunken and disorderly conduct, nevertheless he cannot be exonerated from overdoing his fulfillment of duty to the extent of admittedly shooting and thereby killing said victim, x x x.

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Following the ruling in *People vs. Oanis, et al.*, 74 Phil. 257, we find in favor of appellant the mitigating circumstance of incomplete fulfillment of duty or lawful exercise of right (Article 11, paragraph 5, Revised Penal Code), without any aggravating circumstances, and the imposable penalty should thus be reduced to the minimum of reclusion temporal (Article 64, paragraph 2, of the same Code).[3]

Thus, the respondent court lowered the penalty merely by one period applying Article 64, paragraph 2, of the same Code, appreciating as it did incomplete justification (incomplete fulfillment of duty or lawful exercise of right or office) as a mere generic or specific mitigating circumstance lowering the penalty to the minimum period. Accordingly, the penalty originally imposed by the Court of First Instance of Manila was modified and lowered by the Court of Appeals to six years and one day of prision mayor, as the minimum, to twelve years and one day

of reclusion temporal, as the maximum.[4]

The respondent Court erred. Incomplete justification is a special or privileged mitigating circumstance, which, not only can not be offset by aggravating circumstances but also reduces the penalty by one or two degrees than that prescribed by law. We agree with the petitioner that the governing provision is Article 69 of the Revised Penal Code, which states:

Art. 69. PENALTY TO BE IMPOSED WHEN THE CRIME COMMITTED IS NOT WHOLLY EXCUSABLE.
— A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of the lack of some of the conditions required to justify the same or to exempt from criminal liability in the several cases mentioned in articles 11 and 12, provided that the majority of such conditions be present. The courts shall impose the penalty in the period which may be deemed proper, in view of the number and nature of the conditions of exemption present or lacking.

The above legal provision, articulating the basis of the special or privileged mitigating circumstances of incomplete justification, expressly provides for its applicability to the instances enumerated in Article 12. on Exempting Circumstances, of (he Revised Penal Code, when not all of the conditions required to justify the act or to exempt from criminal liability are present. Unquestionably, the present case would have fallen under No. 5 of Article 11[5] if the two conditions therefor, viz.: (1) that the accused acted in the performance of a duty or in the lawful exercise of a right or office and (2) that the injury or offense committed be the necessary consequence of the due performance of such duty or the lawful exercise of such right or office, concurred. But here only the first condition is fulfilled; the second is wanting. Consequently, Article 69 is applicable, for the requirement "That the majority of such conditions be present" is immaterial since there are only two conditions in order that the circumstance in No. 5 of Article 11 may be taken into account. Basic is the rule that penal laws in favor of the accused should be given liberal construction without, of course, going beyond the obvious intention of the legislature. Article 69 is, obviously, in favor of the accused as it provides for a penalty lower than that prescribed by law when the crime committed is not wholly justifiable, the intention of the legislature being to mitigate the penalty by reason of the diminution of either freedom of action, intelligence, or intent, or of the lesser perversity of the offender.

Indeed, there appears to be no reason why we should not reiterate here our ruling in *People vs. Oanis*.^[6] As we stated therein:

As the deceased was killed while asleep, the crime committed is murder with the qualifying circumstance of alevosia. There is, however, a mitigating circumstance of weight consisting in the incomplete justifying circumstance defined in Article 11, No. 5, of the Revised Penal Code. According to such legal provision, a person incurs no criminal liability when he acts in the fulfillment of a duty or in the lawful exercise of a right or office. There are two requisites in order that the circumstance may be taken as a justifying one: (a) that the offender acted in the performance of a duty or in the lawful exercise of a right; and (b) that the injury or offense committed be the necessary consequence of the performance of such duty or the lawful exercise of such right or office. In the instant case, only the first requisite is present — appellants have acted in the performance of a duty. The second requisite is wanting for the crime committed by them is not the necessary consequence of a due performance of their duty. Their duty was to arrest Balagtas, or to get him dead or alive if resistance is offered by him and they were overpowered. But through impatience or over-anxiety or in their desire to take no chances, they have exceeded in the fulfillment of such duty by killing the person whom they believed to be Balagtas without any resistance from him and without making any previous inquiry as to his identity. According to Article 69 of the Revised Penal Code, the penalty lower by one or two degrees than that prescribed by law shall, in such case, be imposed.

WHEREFORE, the petition is GRANTED insofar as it seeks the modification of the penalty pursuant to Article

69 of the Revised Penal Code and our ruling in Oanis. The petitioner is hereby SENTENCED to an indeterminate penalty of from two years, four months, and one day of prision correccional, to eight years and one day of prision mayor. The questioned judgment is AFFIRMED in all other respects.

Yap, C. J. (Chairman), Melencio-Herrera, Paras, and Padilla, JJ., concur.

[1] Hon. Jose N. Leuterio, presiding judge.

[2] Soriano, E.; Concepcion, Jr., H. and Fernandez, R., JJ., concurring; Esguerra, S.V. and San Diego, L., JJ., dissenting.

[3] Decision, 11-12, 19; Rollo, 21-22, 29.

[4] Decision. 19: Rollo, 29.

[5] Art. 11. JUSTIFYING CIRCUMSTANCES. - The following do not incur any criminal liability:

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(5) Any person who acts in the fulfillment of a duty or in the lawful exercise of a right of office.

[6] 74 Phil. 257. 262-263 (1943).

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