

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
WILFREDO TESORERO, DEFENDANT AND APPELLANT.***G.R. Nos. L-34828-31. June 30, 1976*

Ponente: ANTONIO, J.

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Appellant Wilfredo Tesorero was convicted in four (4) criminal cases for the murder of Eduviges Tapia and Apolonio Torrente in Criminal Cases Nos. 46 and 47, for the attempted murder of Zosimo Tapanan in Criminal Case No. 48, and for the attempted murder with physical injuries of Amador Teston. Appellant was then a member of the regular force of the Philippine Constabulary, detailed as security guard to the then Liberal Party candidate for congressman in the Province of Catanduanes, Salvador Rodulfo, during the 1969 elections. Prior to the shooting incident on November 12, 1969 which gave rise to the cases at bar, appellant had four meetings or confrontations with Amador Teston, one of the victims of the incident in question. At that time, Teston was a member of the Provincial Board of Catanduanes and a political leader of the opposite political faction. The first was on September 20, 1969, when Board Member Teston was on his way from Baras to Virac, Catanduanes to attend a conference with the Provincial Governor. Amador Teston was then riding in a car driven by the deceased Apolonio Torrente. Upon reaching Barrio Libjo of the Municipality of Baras, they were forced to stop because a topless jeep blocked their way. Inside the jeep was a PC soldier who was then standing and pointing his gun to them. This particular soldier was identified by Amador Teston as appellant Wilfredo Tesorero. Amador Teston and his companions were only able to proceed on their way when a bus loaded with uniformed soldiers accompanying congressional candidate Salvador Rodulfo passed by, and it was only then when the topless jeep left to follow the bus. Teston reported this incident to Lt. Rogelio Valentin of the 22nd PC Company of the Catanduanes Command and requested for a constabulary escort for his return to Baras. Acting upon such request, Lt. Aquino, Commanding Officer of the afore-mentioned PC Company, designated Lt. Rogelio Valentin to head an escort unit, composed of Sgt. Cabrera, Sgt. Corpus and Sgt. Suaviso, to accompany Teston. On their way to Baras and upon reaching Barrio Libjo, they met again the same topless jeep, together with the bus of armed men escorting candidate Rodulfo. On that occasion, appellant Tesorero again aimed his gun at Teston and shouted: "Mabuhay si Rodulfo". The third occasion was on October 10, 1969, when Amador Teston, together with a team of PC soldiers under Lt. Valentin, went to Sitio Nahulogan of Barrio Salvacion in Baras. Their mission was to verify the reported presence of armed men on the upper embankment at Kilometer 17 from Virac every time Board Member Teston passed by that road. When they arrived at the place, they learned that among the armed men were appellant Wilfredo Tesorero and one Reynaldo Villanueva, together with two other soldiers. Upon being informed that the group were hiding inside a hut Lt. Valentin and his men surrounded the aforesaid hut but appellant Tesorero and Reynaldo Villanueva were able to escape. Only their two companions were caught and brought to the PC Provincial Headquarters. The fourth time was on October 20, 1969 when Lt. Valentin, together with Sgt. Ocray, Sgt. Corpus and four enlisted men, were sent to Baras by their Commanding Officer to look for appellant Tesorero and Reynaldo Villanueva in view of reports that they were still in Baras, although their detail as security guards of congressional candidate Rodulfo had been terminated since September 24, 1969. When they

arrived in Baras, Lt. Valentin was taken aback when appellant Tesorero suddenly pointed the muzzle of his Garand rifle at his head. Fortunately, Lt. Valentin was able to persuade the appellant that since they belong to the same organization they were not supposed to fight each other. Lt. Valentin reported this incident to the Provincial Commander and who in turn relayed the report to the head of the unit to which appellant Wilfredo Tesorero and Reynaldo Villanueva were assigned.

Meanwhile, Sgt. David Cabrera, who was then the Detachment Commander of the PC Unit at Baras, received a message from the General of the Second PC Zone to be delivered to appellant Wildredo Tesorero and Reynaldo Villanueva, directing them to report to their mother unit because they were already on AWOL. At around 6:00 p.m. of November 12, 1969, upon learning that appellant was staying in the house of Eduviges Tapia at Baras, Sgt. Cabrera, together with Sgt. Zosimo Tapanan, Pfc. Pillogo, Pfc. Mendoza and one trainee, proceeded to the aforementioned place. When they arrived in front of the house of Andres Tapia, they saw appellant Wilfredo Tesorero who immediately surrendered to Sgt. Cabrera but pleaded that he should not be taken to the PC headquarters at Virac but allowed instead to proceed directly to his mother unit in Manila. Sgt. Cabrera agreed to this request and even assured appellant that he would escort him to the pier at Virac the following morning. Apparently satisfied with these arrangements, appellant Tesorero then proposed that they should have a drinking spree, to which Sgt. Cabrera agreed. Some of the men of Sgt. Cabrera even contributed money to buy the alcoholic drinks. In the meantime, some civilians arrived in the house of Andres Tapia and participated in the alcoholic binge. While the party was going on, Board Member Teston, together with one Salvador Beraquit, a Liberal Party leader in Baras, and his driver, Apolonio Torrente, also arrived. According to Teston, his cousin, Eduviges Tapia, had earlier gone to his house to inform him of the presence of Wilfredo Tesorero in her house and of his desire to surrender to him, and it was for that purpose that he went to the house of Tapia. Upon seeing appellant, Teston introduced himself to him and they shook hands. Appellant Tesorero offered Teston a drink consisting of a glass of Tanduay rum mixed with Coca-Cola which the latter accepted. On that occasion, Teston informed appellant that he had nothing to fear because he (Teston) came to know lately that they were relatives, and in acknowledgment of such relationship, Wilfredo Tesorero kissed the hand of Teston. It was at this juncture when Sgt. Cabrera informed Teston that he already had an agreement with appellant that he would escort him to the pier the following morning. Appellant then asked the opinion of Teston on the matter, and the latter told appellant that being his nephew, it was his opinion that because of the things that happened during the elections, Tesorero should see first the Provincial Commander before leaving Catanduanes in order to clear himself. Wilfredo Tesorero, however, disagreed. According to Sgt. Cabrera, one Alfredo Tanael, a former non-commissioned officer of the army, intervened saying that according to army rules, Tesorero cannot be compelled under the circumstances to report to the Provincial Commander, and because of this, the conversation between Teston and Tesorero became heated. Teston then shouted at Sgt. David Cabrera to take charge as he was leaving to attend the session of the Board of Canvassers. Appellant, who had in the meantime gone to his room, came out and pushed Salvador Beraquit towards Amador Teston. Almost simultaneously, appellant brought out his rifle and commenced to fire at Teston. Teston ducked for cover but before he was able to do so, he sustained gunshot wounds on his buttocks. Appellant continued firing at the people inside the house. Apolonio Torrente, who was then sitting on a bench at the porch of the house, was shot mortally and fell to the floor. Sgt. Zosimo Tapanan, who was then at that time seeking cover behind the door of the kitchen, was also shot on the upper left thigh and fell as a result thereof to the floor. Eduviges Tapia, who was then standing beside Sgt. Tapanan, was fatally shot. After firing his gun, Wilfredo Tesorero jumped through the window of the house and ran away. Eduviges Tapia died on the spot, while Apolonio Torrente died upon arrival at the Virac Provincial Hospital. Amador Teston, Sgt. Zosimo Tapanan, Salvador Beraquit and Meliton Arcilla were brought to the hospital where they were treated for various kinds of gunshot wounds.

Patrolman Sancho Lizaso, who conducted an ocular inspection of the scene of the crime, found four (4) empty Garand rifle shells (Exhibits "M", "M-1" to "M-3") at the entrance of the bedroom where appellant stood at the time he fired his Garand rifle; six (6) Garand clips containing eight (8) live bullets each (Exhibits "N", "N-1" to "N-5") inside the bedroom, on top of a sewing machine, together with a jacket with PC insignia and chevron (Exhibit "O") having a hand grenade (Exhibits "P" and "P-1") inside its pockets (Exhibit "O"). He saw blood stains on the floor of the dining room where the body of the deceased Eduviges Tapia was found, and also blood stains on the sala and in the porch. He found also three (3) bullet holes on the wall separating the sala from the porch (Exhibit "2-A"), on the wall leading to the dining room (Exhibit "2-B), and on the bamboo post (Exhibit "2-C"). According to Sgt. Tapanan, no other person inside the house fired a gun, except appellant Tesorero.

Dr. Loreto Rojas, who conducted the autopsy of the deceased Eduviges Tapia, found that the cause of death was hemorrhage, secondary to gunshot wound. As per his necropsy report (Exhibit "A"), the deceased sustained the following gunshot wounds: (1) a perforating wound with lacerated border on the deltoid muscle, right; (2) compound comminuted fracture of the whole upper third of the humerus, right; (3) compound comminuted fracture of the 1st, 2nd and 3rd ribs, right; and (4) a perforating wound with point of entrance at the lateral side, measuring 1-1/2 cms. in diameter with clean cut border over the upper lobe of the right lung, with point of exit at the medial aspect thereof, circular in shape with lacerated border of 2 cms. in diameter. He found a bullet slug (Exhibit "D") embedded in the thoracic vertebrae (Exhibit "B").

Dr. Augusto Sta. Ana, who performed the autopsy on the body of the deceased Apolonio Torrente, testified that Torrente died of internal hemorrhage secondary to gunshot wound (Exhibit "G"). The gunshot wound had its entrance at the anterior portion of the abdomen 4 cms. above the umbilicus and its exit at the posterior portion of the back. The small intestine, omentum and the abdominal aorta were all perforated, while the spinal column was injured. According to Dr. Sta. Ana, the victim, on the basis of the location and direction of the gunshot wounds, could have been shot frontally. Meliton Arcilla, who was also near the other victims, suffered a gunshot wound on the little finger and dorsal aspect of the left hand, abrasion on the left forearm and powder burns on the left hand, which injuries required twenty (20) to twenty-five (25) days of medical treatment (Exhibit "H"). Salvador Beraquit sustained gun-shot wound and hematoma on the left lumbar region which required from twenty (20) to twenty-five (25) days of medical treatment (Exhibit "I"). Zosimo Tapanan sustained a gunshot wound on the left thigh and comminuted fracture of the proximal third, femur, left, which lesion required four (4) to five (5) months treatment. And finally, Amador Teston sustained a gunshot wound, through and through, over the gluteal region. His injuries required twenty (20) to twenty-five (25) days of medical treatment.

On the basis of the foregoing, the trial court rendered judgment convicting appellant Wilfredo Tesorero (a) of Murder in Criminal Case No. 46 for the death of Eduviges Tapia, imposing upon him the penalty of life imprisonment and ordering him to indemnify the heirs of the said deceased in the amount of P12,000.00; (b) of Murder in Criminal Case No. 47 for the death of Apolonio Torrente, sentencing him to suffer the penalty of life imprisonment and also ordering him to indemnify the heirs of said deceased in the amount of P12,000.00; (c) of Attempted Murder in Criminal Case No. 48 for the shooting of Zosimo Tapanan and sentencing him to an indeterminate penalty of from Two (2) years, Ten (10) months and Twenty (20) days of prision correccional as minimum to Six (6) years, One (1) month and Eleven (11) days of prision mayor as maximum; and (d) of Attempted Murder with Physical Injuries in Criminal Case No. 49 for the shooting of -Amador Teston, Meliton Arcilla and Salvador Beraquit, and sentencing him to suffer an indeterminate penalty of from Four (4) years and Two (2) months of prision correccional as minimum, to Eight (8) years and Twenty-one (21) day of prision mayor as maximum. In all of the afore-mentioned cases, appellant was credited with the full term of his preventive imprisonment, and to pay the costs.

The issue posed by appellant in this appeal is whether, on the basis of the evidence, the trial court erred in holding appellant criminally responsible for the death of Eduviges Tapia and Apolonio Torrente and for the injuries sustained by Zosimo Tapanan, Amador Teston, Meliton Arcilla and Salvador Beraquit. Appellant contends that the afore-mentioned victims could have been slain or injured by a person or persons other than by appellant. This argument is predicated on his averment that (a) the diameter of the wound of entrance on the cadaver of the deceased Eduviges Tapia is 1-1/2 cms. or 0.59 inch, much bigger than the caliber of a Garand Cal. .30 rifle, which was the firearm of appellant, coupled with the failure of the prosecution to submit in evidence the slug (Exhibit "D") which creates the presumption that if said slug is produced, it would be adverse to the prosecution; and (b) the absence of positive proof that the victims were all injured by bullets fired from the gun of appellant, especially in view of the statement of witnesses in their affidavits that during the incident there were armed men who also fired their guns.

The circumstance that the diameter of the wound of entrance found on the body of Eduviges Tapia does not correspond with the diameter of a bullet from a .30 caliber Garand rifle, or that said wound is much bigger than the diameter of a bullet that could have come from the Garand rifle of appellant, does not necessarily preclude a finding that the said wound was caused by a bullet fired from the rifle of appellant. The size of the wound of entrance may not necessarily correspond to the caliber of the penetrating bullet,[1] as the bullet may be deformed and flattened before entering the skin, as in a ricochet from a hard surface and leave a wound larger than the original missile, usually of an irregularly and ovoid or triangular shape.[2] The appearance of an entrance wound is influenced by the distance of discharge, the type of weapon, the powder and the part of the body hit. Thus, "in the case of high velocity projectiles, such as rifle bullets, the wounds produced in the body vary with the distance from which the bullet is fired. When fired from less than three hundred (300) to four hundred (400) yards, the force of impact is so great that the tissues may disintegrate and a large cavity is formed." [3]

According to the evidence of the prosecution, the bullet which fatally injured Eduviges Tapia passed first thru the wall separating the room from the kitchen before hitting the victim. The slug, having struck first a hard object, was, therefore, deformed. This would explain the circumstance that the diameter of the wound of entrance is larger than the diameter of the original bullet.

Equally untenable is the contention of appellant that the non-production of the slug amounted to a willful suppression of such evidence by the prosecution. The attendant circumstances do not support this assertion. It must be noted that after Dr. Loreto Roxas extracted the slug from the body of the deceased, he entrusted it to the care of his wife instead of delivering it to the police authorities. When the case was called for preliminary investigation in the Office of the Provincial Fiscal, the slug could not be produced by the police because it was allegedly misplaced by the wife of Dr. Roxas. It was only during the hearing of the application of appellant for bail that the slug (Exhibit "D") was produced and identified by Dr. Roxas. According to the trial court, the slug was subsequently presented by the defense counsel to appellant Tesorero during his direct examination of appellant to ascertain from him whether or not the slug came from his Garand rifle. After appellant denied that the said slug came from his rifle, nothing else was done by the defense, either to have it marked as their exhibit or have it entrusted to the court for safekeeping. In the meantime, the private prosecutor requested permission to take the slug for ballistic examination. When the trial was resumed, the slug could no longer be located. Considering that in the course of the trial the afore-mentioned slug was, at one time or another, in the possession of either the prosecution or the defense who had the opportunity to present it as evidence but instead both failed, it is, therefore, not true that the prosecution has deliberately suppressed the said evidence. At any event, no such unfavorable inference against the prosecution could arise, considering that even if such evidence were submitted by the prosecution, it would only be corroborative or cumulative,[4] for the principal evidence linking appellant with the death of Eduviges Tapia is the testimony of the eyewitnesses. Thus, Sgt. Tapanan testified that he was

positive that the appellant fired more or less six (6) to eight (8) shots, one of which passed thru the wall of the living room before injuring fatally Eduviges Tapia, who was then standing beside him. The presence of a bullet hole (Exhibit "L-4") on the wall leading to the dining room, as well as the trajectory of the bullet, in relation to the position of the appellant vis-a-vis Tapia, when the former fired his gun, confirm Tapanan's testimony.

We also find without factual basis appellant's contention that the death of Tapia and Torrente could have been caused by the shots fired by other armed men who were then on the ground. Apart from the circumstance that the same is a mere conjecture, said appellant admits that he heard those shots only after he had already jumped out of the window and landed at the top of a jeep. At that time, he had already fired his Garand rifle about four (4) times at Teston, then at Arcilla. Besides, it would have been absurd for the bodyguards of Teston, assuming that they were then on the ground, to have fired their guns indiscriminately at the house of Tapia, for that would have placed the life of Teston himself in jeopardy. Such conjectures cannot prevail over the clear and positive evidence of the prosecution that it was appellant alone who fired his gun at the people inside the house. Thus, Sgt. Zosimo Tapanan categorically stated that it was appellant who shot Torrente and Tapia. Teston clearly declared that it was only appellant who fired his gun at the victims. According to Reynaldo Villarasa, he did not see any other person who fired his gun except the appellant. Two defense witnesses, Sgt. David Cabrera and Andres Tejada admitted that it was appellant alone who they saw firing his gun on that occasion. Thus, defense witness Andres Tejada declared:

"Q. What did the accused Wilfredo Tesorero do, if he did anything?

A. I noticed that he was already holding a Garand rifle.

Q. What did he do with his Garand?

A. He shot Apolonio Torrente." (t.s.n., p. 176, March 18, 1971).

Having reached the conclusion that it was only appellant who fired his gun at the people inside the house, it follows, as a necessary logical consequence, that he alone is responsible for the gunshot wounds sustained by the other victims therein. Besides, he admitted that when he fired at Teston, Beraquit was in the line of fire as he was standing between him and Teston and, therefore, could have injured Beraquit when he was firing at Teston. He also admitted that he fired at Meliton Arcilla after shooting Teston.

Finally, appellant contends that even assuming that he was responsible for the death of Eduviges Tapia and Apolonio Torrente and for the injuries sustained by Zosimo Tapanan, Amador Teston, Meliton Arcilla and Salvador Beraquit, still the trial court erred in not holding that said appellant acted in legitimate self-defense. In order to invoke self-defense, the accused must first of all prove unlawful aggression on the part of the person injured or killed by the aforesaid accused.[5] In the case at bar, appellant failed to prove unlawful aggression on the part of any of the victims. The only possible evidence of appellant on this matter is his uncorroborated testimony that when Board Member Teston attempted to enter his room he pushed him and that was the time when Meliton Arcilla fired at him "point blank" from a distance of about two (2) meters. But this testimony is, however, rendered implausible by the declaration of his own witness, Andres Tejada, who affirmed that it was appellant who first fired at Teston, then at Torrente, and the testimony of defense witness Sgt. David Cabrera that after Teston shouted to him to take charge, appellant grabbed his Garand rifle and shot at everybody in the house.[6]

We reiterate here the rule that in order for a plea of self-defense to prosper, it must be supported by clear and convincing evidence.[7] When an accused admits that he is the author of the death of the deceased, it is incumbent

upon him, in order to avoid criminal liability, to prove the justifying circumstance of self-defense to the satisfaction of the court. To do so, he must rely on the strength of his own evidence and not on the infirmity of that of the prosecution, for even if that were weak, it could not be disbelieved after the accused himself had admitted the killing.[8]

We do find merit, however, to the observation of the Solicitor General that the evidence of the prosecution does not justify the application of the qualifying circumstance of treachery. As this Court ruled in previous cases,[9] the circumstance "that an attack was sudden and unexpected to the person assaulted did not constitute the element of alevosia necessary to raise a homicide to murder, where it did not appear that the aggressor had consciously adopted a mode of attack intended to facilitate the perpetration of the homicide without risk to himself." In the present case, there are circumstances which negate the assumption that appellant employed means, method or forms of execution which tend directly and specially to insure the commission of the crime and at the same time eliminate or diminish the risk to his person from the defense which the other might do. In fact, the witnesses for the prosecution admitted that the appellant and the victims started with apparently cordial note before the incident in question. The decision to shoot or kill the victims was sudden, brought about apparently by the insistence of Teston that appellant should clear himself first with the Provincial Commander which led to a heated argument between the two. Absent the qualifying circumstance of treachery, appellant should be held responsible only for the crimes of Homicide for the death of Tapia and Torrente and Attempted Homicide for the shooting of the other victims.

WHEREFORE, in view of the foregoing, We affirm the judgment with the following modifications

- (a) In Criminal Case No. 46, from Murder to Homicide as defined under Article 249 of the Revised Penal Code, with no aggravating nor mitigating circumstance, the penalty to be likewise reduced to an indeterminate sentence of imprisonment from 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, to indemnify the heirs of Eduvigis Tapia in the amount of P12,000.00 and to pay the costs;
- (b) In Criminal Case No. 47, from Murder to Homicide as defined under Article 249 of the Revised Penal Code, with no aggravating nor mitigating circumstance, the penalty to be likewise reduced to an indeterminate sentence of imprisonment from 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, to indemnify the heirs of Apolonio Torrente in the amount of P12,000.00 and to pay the costs;
- (c) In Criminal Case No. 48, from Attempted Murder to Attempted Homicide as defined and punished under Article 249, in relation to Article 51, of the Revised Penal Code, with no mitigating nor aggravating circumstance, the penalty to be likewise reduced to an indeterminate sentence of imprisonment from THREE (3) MONTHS and ONE (1) DAY of arresto mayor as minimum, to TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correctional as maximum, and to pay the costs; and
- (d) In Criminal Case No. 49, from Attempted Murder with Physical Injuries to Attempted Homicide as defined and punished under Article 249, in relation to Articles 48 and 51 of the Revised Penal Code, the penalty to be likewise reduced to an indeterminate sentence of imprisonment from FIVE (5) MONTHS and ONE (1) DAY of Arresto Mayor as minimum to FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY prision correctional as maximum, and to pay the costs.

In all of the afore-mentioned cases, the appellant should be credited with the full term of his preventive imprisonment.

Fernando, (Chairman), Barredo, Aquino, and Martin, JJ., concur.

Concepcion Jr., J., is on leave.

Martin, J., was designated to sit in the Second Division.

[1] "The size of the wound of entrance may correspond somewhat to the caliber of the penetrating bullet, but the correspondence is not close enough to allow the examiner to use the diameter of the skin perforation as a reliable criterion for estimating the size of the bullet. In a particular case factors may be introduced which may lead to erroneous conclusions. After the passage of the bullet, the resilient skin may return to its original condition, and by the contraction of muscular and elastic elements in the dermis of the wound of entrance may be actually smaller than the caliber of the projectile. On the other hand the bullet may be deformed and flattened before striking the skin, as in a ricochet from a hard flat surface, and leave a wound of entrance larger than the original missile, usually of an irregularly ovoid or triangular shape. The same effect is produced in a re-entrance wound. Sometimes a bullet may strike an object and tumble, hitting the body side on in which case an elongated wound of entrance like a keyhole will be produced." * * * (Pathology and Toxicology - Gonzales, Vance, Helpen and Umberger, Legal Medicine, Second Edition, pp. 400-402).

[2] Ibid., p. 400.

[3] "In the case of high-velocity projectiles such as rifle bullets, the wounds produced in the body vary with the distance from which the rifle is fired. When fired from less than three to four hundred yards the force of impact is so great that the tissues may disintegrate and a large cavity is formed. This may take place even when only soft tissues are hit. If bone is hit, the bone may fragment and the pieces cause still further destruction. In addition to this bursting of the tissues, the bullet itself may burst, the general effects produced being those usually associated with dum-dum bullets. At medium ranges the bullet is steady in its flight and tends to pass clean through the tissues, leaving two small holes, whilst at a range over a thousand yards large lacerated wounds are produced." (Kerr, Forensic Medicine, Fifth Edition, p. 141.)

[4] People vs. Tuzon, 56 Phil. 649; Nicolasvs.Nicolas, 62 Phil. 70.

[5] Peoplevs.Apolinario, et al., 58 Phil. 586.

[6] T.s.n., March 18, 1971, p. 151.

[7] Peoplevs.Berio, 59 Phil. 533.

[8] Peoplevs.Ansoyon, 15 Phil. 772, 775, 777.

[9] Peoplevs.Tumaob, 83 Phil. 738, 742; peoplevs.Dadis, 18 SCRA 699.

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