

RAMON BORGUILLA, PETITIONER, VS. HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-47286. January 07, 1987

Ponente: PARAS, J.

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PARAS, J.:

Petitioner Ramon Borguilla and one Hernando Caray were charged with the crime of murder before the Circuit Criminal Court of Rizal, Branch VII. After trial, the court a quo acquitted Hernando Caray for insufficiency of evidence, while petitioner was found guilty beyond reasonable doubt of murder under Article 248 of the Revised Penal Code. Accordingly, he was sentenced to suffer the penalty of "from seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as minimum to twenty (20) years of reclusion temporal, as maximum, to indemnify the heirs of the offended party the amount of Twelve Thousand (P12,000.00) Pesos, without subsidiary imprisonment in case of insolvency considering the gravity of the penalty imposed and to pay costs."

From the aforesaid decision, petitioner appealed to the Court of Appeals assailing his aforesaid conviction and contending that the trial court erred: (a) in giving due weight and credence to the version of the prosecution; (b) in finding that there were two (2) stages of encounter between the victim Tirso Abad and the accused Ramon Borguilla; (c) in not giving due weight and credence to the version of the accused, as duly supported by the evidence for the defense; (d) in not finding that the accused acted in self-defense and in pursuance of his duty as a law officer when he shot the victim Tirso Abad; (e) in holding that the accused had a motive in shooting the victim Tirso Abad and (f) in not acquitting the accused.

On March 18, 1976 respondent Court of Appeals promulgated its Decision affirming the judgment of conviction appealed from, with a modification of the penalty imposed on a finding of incomplete self-defense.

Petitioner filed a motion for reconsideration contending that: (a) the testimonies of Cesar Abad and Antonio Basco merit no credit; (b) the medical findings show Abad's (the victim's) fighting stance and impugn the prosecution's version of the incident; (c) appellant proved self-defense by clear and convincing evidence, and (d) lack of motive establishes the truth of appellant's version of the incident.

The motion was, however, denied by the Court of Appeals in its Resolution dated June 10, 1986. Thereafter, and with leave of court, petitioner filed second motion for reconsideration. Justices Crisolito Pascual, Ramon G. Gaviola, Jr. and Mariano Serrano voted to deny the motion while Justices Pacifico de Castro and Mariano V. Agcaoili dissented and voted to acquit the accused.

Hence, petitioner filed this petition for review seeking the reversal of the decision of respondent Court of Appeals and praying that he be acquitted of the crime charged on the following grounds:

1. The Court of Appeals erred in basing its decision on the testimonies of Cesar Abad and Antonio Basco, which in accordance with the applicable decisions of this Court, are not acceptable as proofs; and
2. The Court of Appeals erred in finding that petitioner is only entitled to incomplete self-defense.

The People's version of the facts of the case is summarized in the following portions of the assailed decision of the Court of Appeals:

"It appears that at the time of his death, Tirso Abad was a Technical Assistant of Mayor Maximo Estrella (t.s.n., December 22, 1969, pp. 26-27). In the elections of November, 1969, Tirso Abad ran for the office of councilor of Makati, Rizal (t.s.n., January 13, 1970, pp. 3-4) and was identified with the political group of Mayor Estrella, who had promised to support his candidacy. Nevertheless, Tirso Abad lost in the elections and felt very strongly that he was not supported by the faction of Mayor Estrella. Fancied or not, Tirso Abad's resentment grew to a point where he vowed to expose Mayor Estrella (t.s.n., December 22, 1969, pp. 22-23). What fairly started as a political feud assumed the aspect of a deep grudge.

On the night of November 22, 1969, at about past nine o'clock in the evening, Tirso Abad, who was then slightly under the influence of liquor, together with three companions, one of them being Antonio Mosqueda (t.s.n., January 5, 1970, p. 48), went to the meeting place of the "Samahang Magdamag" located at the house of a certain Ireneo Francisco at M. Ocampo Street, Makati, Rizal, which Mayor Estrella naturally often visited (t.s.n., January 5, 1970, pp. 62-63). Later in the evening, sometime between 10:00 and 10:30 o'clock, Mayor Estrella, together with Ramon Borquilla, a one-time security guard of the mayor and later on as a police lieutenant of Makati, arrived at the said meeting place in a jeep (t.s.n., January 5, 1970, pp. 63, 78; January 12, 1970, pp. 42, 72). Tirso Abad approached Mayor Estrella and said, "Mayor, pinatalo mo ako." Mayor Estrella, replied in a surprise, "Anong pinatalo kita?" Tirso Abad said, "Ginanoon mo ako, eh," gesturing with his thumbs down (t.s.n., January 12, 1970, pp. 43, 44). Mayor Estrella proceeded to the house of Ireneo Francisco followed by Tirso Abad and there continued their heated conversation (t.s.n., January 12, 1970, pp. 44-45). In the meanwhile, the appellant, Ramon Borquilla, went back to the mayor's jeep which the driver had parked near a Meralco post. Not very long after, Tirso Abad, in an angry and indignant mood, came out of the house, crossed the street and went behind a parked garbage truck to relieve himself, after which he started back to the house of Ireneo Francisco. This time, his shirt was opened to the waist showing a revolver tucked in the left side of his pants (t.s.n., January 5, 1970, pp. 65-66, 79; January 9, 1970, p. 51). Appellant saw it and before Tirso Abad could cross the street, the appellant tried to pacify him, "Pasensiya ka na, mayroon pa namang 1971." (January 12, 1970, p. 46). But this remark drew an angry retort from Tirso Abad and he blurted, "Hindot kayo." He took a step back, pulled his revolver and fired at the appellant (t.s.n., January 5, 1970, p. 66; January 12, 1970, pp. 46-47, 83). Tirso Abad missed his shot. Before he could fire again, Borquilla was able to pull out his re-volver and pumped six successive shots hitting Tirso Abad in different parts of his body (t.s.n., January 12, 1970, pp. 48, 83), none of which felled Abad. Ramon Borquilla jumped over the other side of the jeep to seek cover (Ibid., p. 49). Although wounded, Tirso Abad also sought cover behind a truck parked on the other side of the street (Ibid., p. 50) and fired at Ramon Borquilla, who had in the meanwhile reloaded his gun (Ibid., pp. 51, 85). Tirso Abad missed Borquilla again but hit instead Domingo Alcantara, who was behind Ramon Borquilla (t.s.n., January 5, 1970, p. 65; January 12, 1970, pp. 49, 52). Tirso Abad worked his way behind the truck and later entered the house of Mrs. Miguela Francisco (January 9, 1970, p. 22), after emptying his revolver (Exhibits D-5-a to D-5-f) in the porch of Mrs. Francisco's house. He reloaded his gun and moved from one room to another facing the street. Not very long after, several policeman in two mobile patrol cars arrived and deployed themselves. At about this time, Cesar Abad, the victim's brother, arrived at the scene of the shootout, after he was informed of the shooting incident by Antonio Mosqueda (t.s.n., December 22, 1969, pp. 5, 6). Cesar Abad was about to approach a man with a hand-kerchief tied around his head (who turned out to be the accused, Ramon Borquilla) but he was told not to move (t.s.n., December 22, 1969, pp. 8-9). Cesar Abad heeded the warning. He approached instead one of the policemen crouched behind a police car and pleaded with him to stop the shooting and he would try to get his brother to surrender (t.s.n., December 18, 1969, p. 12; December 22, 1969, p. 10; January 9, 1970, p. 63). Cesar Abad proceeded to the house of Mrs. Miguela Francisco (t.s.n., December 18, 1969, p. 12) and called out to his brother, "Sumuko ka na, naririto ang hustisya." (t.s.n., December 18, 1967, p. 13). Tirso Abad agreed and a few minutes later, he came out staggering with both his hands raised above his head, his revolver still in his left hand and said, "Ayoko na,

suko na ako." (Ibid., p. 13; December 18, 1969, pp. 11, 12). He then threw his revolver on the street and tried to sit down (t.s.n. December 18, 1969, pp. 13-14) when the accused, Ramon Borquilla rushed him (at point marked Exhibit L-10 on Exhibit L) and shot him three times (t.s.n., December 18, 1969, p. 14; December 22, 1969, pp. 13-14; January 9, 1970, p. 60). Tirso Abad collapsed with his hands covering his face. Cesar Abad cried in protest, "Tama na, tama na." (t.s.n., December 22, 1969, p. 14). With the help of some of the men, Cesar Abad carried his wounded brother into a police car and brought him to the Makati Medical Center where he died.

The shooting incident was reported at about 10:30 o'clock that same night to the Makati Police Department. Antonio Basco, Cesar Abad and Eustaquio Acuña executed their sworn statements before Detective Lt. Dante Marte and Cpl. Antonio Castro of the Criminal Investigation Department of the Makati Police (Exhibits M, N, R).

Sergeant Godofredo Espinosa and Corporal Rodolfo de Leon, precinct investigators were immediately assigned to the case and they went to the scene of the shootout that very night for an on-the-spot investigation. They talked to the people still milling around. They confirmed the shooting incident involving Tirso Abad and Ramon Borquilla (t.s.n., December 22, 1969, pp. 59, 61; t.s.n., January 8, 1970, p. 3). Among other things, they recovered the blood stained Smith and Wesson .357 Magnum revolver of the deceased on the street with six (6) live cartridges (Exhibits D-1-a to D-1-f) still inside the cylinder of the revolver and five (5) empty .357 shells (Exhibits D-5-a to D-5-f) on the porch of Miguella Francisco's house. Sgt. Espinosa turned over the recovered evidence to Lt. Dante Marte, who was with Sgt. Espinosa and Cpl. de Leon (t.s.n., January 12, 1970, p. 14). From the scene of the incident, the investigators proceeded to the Makati Medical Center but Tirso Abad expired before they could reach the hospital (t.s.n., December 2, 1969, p. 76). Sgt. Espinosa submitted his report (Exhibit Q). Lt. Marte submitted his preliminary and supplementary reports of the shootout (Exhibits J and J-1).

The following day, November 23, 1969, Dr. Ernesto Jimenez, NBI medico-legal officer, conducted a post-mortem examination of the body of the deceased, Tirso Abad. In the course of the post-mortem examination, pictures of the deceased (Exhibits B to B-10) were taken showing the wounds in the different parts of his body. Dr. Jimenez prepared a necropsy report (Exhibit A) and sketches (Exhibits C, C-1, C-2) indicating the location of the wounds. The post-mortem examination of the deceased revealed nine gunshot entrance wounds and six exit wounds. Three slugs were found inside the body. The medico-legal expert testified that the cause of death was acute hemorrhage resulting from multiple gunshot wounds caused by a .38 caliber Colt revolver and that the gunshot wounds on the body were caused by .38 caliber bullets."

Petitioner invoked the justifying circumstance of self-defense. But the Court of Appeals found that he is only entitled to incomplete self-defense, because the "defense failed to satisfactorily establish that there was reasonable necessity to shoot the victim when he came out of Mrs. Francisco's house", the latter having thrown away "his revolver and tried to sit down on the street, obviously weary and weak from loss of blood."

Therefore, the only issue to resolve in the instant petition is — whether or not there was reasonable necessity for the petitioner to shoot the victim Tirso Abad to death.

Witnesses for the prosecution, Celso Abad (brother of the victim) and Antonio Basco testified that:

"x x x. Not very long after, several policemen in two mobile patrol cars arrived and deployed themselves. At about this time, Cesar Abad, the victim's brother, arrived at the scene of the shootout. After he was informed of the shooting incident by Antonio Mosqueda (t.s.n., December 22, 1969, pp. 5, 6). Cesar Abad was about to approach a man with a handkerchief tied around his head (who turned out to be the accused, Ramon Borquilla) but he was told not to move (t.s.n., December 22, 1969, pp. 8-9). Cesar Abad heeded the warning. He approached instead one of the policemen crouched behind a police car and pleaded with him to stop the shooting and he would try to get his brother to surrender (t.s.n., December 18, 1969, p. 12; December 22, 1969,

p. 10; January 9, 1970, p. 63). Cesar Abad proceeded to the house of Mrs. Miguela Francisco (t.s.n. December 18, 1969, p. 12) and called out to his brother, 'Sumulo ka na, naririto na ang hustisya.' (t.s.n., December 18, 1969, p. 13.) Tirso Abad agreed and a few minutes later, he came out staggering with both his hands raised above his head, his revolver still in his left hand and said, 'Ayoko na, suko na ako.' (Ibid., p. 13, December 22, 1969, pp. 11, 12.) He then threw his revolver on the street and tried to sit down (t.s.n., December 18, 1969, pp. 13-14) when the accused, Ramon Borguilla rushed him (at point marked Exhibit L-10 on Exhibit L) and shot him three times (t.s.n., December 18, 1969, p. 14; December 22, 1969, pp. 13-14; January 9, 1970, p. 60. Tirso Abad collapsed with his hands covering his face. Cesar Abad cried in protest, 'Tama na, tama na.' (t.s.n., December 22, 1969, p. 14). With the help of some of the men, Cesar Abad carried his wounded brother into a police car and brought him to the Makati Medical Center where he died."

On the other hand, witnesses for the defense, Benjamin Roldan, Cpl. Rodolfo de Leon and Lt. Gregorio Averia testified that the victim Tirso Abad fired his gun once at petitioner after coming out of Mrs. Francisco's house. Benjamin Roldan's testimony as summarized in the trial court's decision is as follows:

"x x x. On his way to the house of Ireneo Francisco just in front of the store opposite the said house of Francisco he suddenly heard gun-shots. Because of fear, he jumped inside the store and lied face down.

After twenty minutes more or less, he heard a shout saying: 'Abad, sumuko ka na at ikaw ay napaligiran ng pulis.'

What he did was to peep because he thought that everything calmed down and it was already safe. Then he heard a reply to the call to surrender, saying 'Oo susuko na ako.' That was the time he peeped.

When he peeped, he saw Borguilla by the side of the jeep, which was parked near the veranda of the house of Mrs. Francisco. He also saw that Tirso Abad was coming out of the veranda of Mrs. Francisco — holding his stomach and his gun.

When Tirso Abad was already very near Borguilla, Tirso Abad fired his gun. Abad fired his gun towards his right. Borguilla was at the edge of the jeep. Borguilla was at the right side of Tirso Abad.

The witness lied face down again. After Tirso Abad fired his gun, he heard two more soft shots. The shot from the gun of Tirso Abad was louder than the last two gunshots."

Benjamin Roldan's testimony on the last shot by Tirso Abad is buttressed by the testimonies of Cpl. Rodolfo de Leon and Lt. Gregorio Averia. Cpl. de Leon testified as follows:

"Q

On November 22, 1969 do you remember having been called to investigate a shooting incident at Mr. Ocampo, Makati, Rizal?

A

Yes, sir.

Q

What time did you go to the place?

A

It was around ten thirty in the evening.

Q

Who was your companion at that time?

A

Sgt. Godofredo Espinosa.

Q

When you were there what did you do?

A

We conducted investigation.

Q

And you yourself what did you find?

A

I found the alleged revolver of Tirso Abad.

Q

I am showing to you Exhibit B-1, for the prosecution, will you tell us whether the same is the gun you found in the scene of the shooting?

A

This is the same — exactly the gun.

Q

Where in particular scene did you find this Exhibit B-1?

A

On the street.

Q

And when you picked up this gun from the ground, what did you do with it?

A

I inspected it by putting out the cylinder of the gun.

Q

What did you find when you put out the cylinder of the gun?

A

I saw that there were five bullets and one empty shell.

Q

Thereafter what did you do with Exhibit B-1?

A

Well, I turned it over to Sgt. Godofredo Espinosa." (t.s.n., January 8, 1970, pp. 304)

While Lt. Gregorio Averia stated:

"A

When we were inside the house where said Tirso Abad went, I saw Corporal de Leon holding a revolver.

Q

What kind of revolver was that being held by Corporal de Leon?

A

It was a Magun 357, sir.

Q

I am showing to you this revolver, marked as Exhibit D, is this the gun which Corporal de Leon holding?

A

This looks like the gun that he was holding, sir.

Q

Did you examine the gun then?

A

I opened the cylinder, sir.

Q

What did you discover or see in the cylinder?

A

I saw one of the cartridges inside one of the chambers in the cylinder with this primer with markings being hit by the firing pin of the revolver, sir.

Q

As a policeman, what does this indicate to you?

A

It was fired, sir.

Q

How many cartridges did you find in the cylinder of the gun?

A

There were six (6), sir.

Q

How many were fired as you saw?

A

One (1) is supposed to be fired, sir.

Q

And the other ones?

A

They were not fired, sir.

Q

After examining it, what did you do?

A

I handed it back to Corporal de Leon." (t.s.n., January 12, 1970, pp. 15-17)

In cases such as the one now before Us where there are directly conflicting versions of the incident object of the accusation, the Court in its search for the truth perforce has to look for some facts or circumstances which can be used as valuable aids in evaluating the probability or improbability of a testimony. We have reviewed the conflicting testimonies of the several witnesses presented by both the testimonies of the two alleged prosecution eyewitnesses, Celso Abad and Antonio Basco cannot be believed.

To start with, Celso Abad's claimed presence during the shooting incident is highly doubtful. He states in his affidavit that when he arrived at N. de Ocampo St. where the incident took place, Pat. Acuña was already there.

"15. T

Sa mga pulis na dinatnan mo sa pinangyarihan ng barilan, wala ka bang nakikilala?

S

Mayroon po (Declarant points to the person of Cpl. Eustaquio Acuña, who is now inside of the CID office)" (Exhibit N, p. 2).

Likewise, during the trial he declared:

"Q

As a matter of fact you saw Patrolman Abad at the scene of the crime?

A

I don't know if he is Patrolman Abad, sir.

Q

Patrolman Acuña, I mean to say, I made a mistake?

A

I didn't know also that if he is Patrolman Acuña, Sir.

Q

But later on you came to know that you saw the policeman, Patrolman Eustaquio Acuña?

A

Yes, sir.

Q

He was already there when you arrived at the scene?

A

They were all there, sir."

Patrolman Acuña, on the other hand, stated in his affidavit immediately after the incident that he arrived at the scene when the shooting was all over.

"20. T

Paano ninyo nalaman na maybarilan sa M. Ocampo St., bago kayo nakarating doon.

S

Nalaman namin ito ng dumaan ang isang mobile unit bilang 404 na sinasakyan nila Sgt. R. Octaviano at Pat. R. Tiangco na nagsabi sa amin na sumunod kami at may barilan doon sa M. Ocampo St. 21.

T

Nang kayo ay dumating sa lugar ng barilan, inabot pa ba ninyo ang mga taong maykaugnayan doon at nakadinig pa ba kayo ng putok o mga putokan?

S

Wala nang putokan ng kami ay dumating, at ang taong nakita namin ay si Tirso Abad na lamang, na sugatan, duguan ang damit kayat madali naming dinala sa ospital." (Exh. R p. 2)

And he sustained this during the trial.

Q

Did you hear any shooting, from the time when you arrived at the said place, where the shooting occurred?

A

No, sir.

Q

Up to the time you left the place?

A

No, Sir." (t.s.n., January 5, 1970, pp. 7-8)."

From the foregoing testimonies, it is quite evident that Celso Abad had simply no means and opportunity to observe the shooting incident. He could not be present during the shooting for obvious reasons. Pat. Acuña who was ahead of him came late and did not see the shooting. Definitely, Abad came much later.

Then also there is the established fact that Sgt. Godofredo Espinosa and Cpl. Rodolfo de Leon, the police officers who reportedly responded to the scene of the shooting testified during the trial that when they arrived, the entire incident had already transpired. If these policemen did not see the incident, and they arrived earlier than Abad, the latter's claimed presence cannot be believed.

Not only is Cesar Abad's competence to observe the facts that occurred highly questionable his testimony thereon is strangely odd and inconsistent. In his statement to the police (Exh. "N") Cesar Abad omitted to mention that his brother was shot while already lying helpless on the ground. With all the bitterness and indignation one would expect of a person who has allegedly witnessed the offensive and painful fact of his brother being mercilessly shot to death, it is very odd for Cesar Abad to omit to mention this in his immediate statement to the police. Of course, sometime later, while testifying before the Fiscal (Exh. "3") he remembered that his brother was shot while lying on the ground. But this belated assertion only accentuates Cesar Abad's inconsistency.

The same observation is true with reference to the testimony of Antonio Basco who related the incident on different occasions in different ways. Thus, before the police, Antonio Basco stated that Tirso Abad was shot when the latter was already lying flat on the ground. This is simply not true and in fact impossible by reason of the downward trajectory of the bullets in the body of Tirso Abad. Before the Fiscal, Antonio Basco stated that — "when Tirso Abad came out of the house with his hands raised, I saw he was about to sit down when Ramon suddenly shot him," and before the court he stated "Tirso Abad threw his gun and slowly sitting down, I saw one of the two men shoot Tirso Abad." Evidence to be believed must not only proceed from the mouth of a credible witness, it must be credible in itself — such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation and experience. Whatever is repugnant to these belongs to the miraculous and is out-side of judicial cognizance.

Upon the other hand and without relying on the weakness of the prosecution's evidence, the defense has met the

requirement of proving by clear and convincing evidence all the justifying circumstances of complete self-defense — particularly that of — reasonable necessity of the means employed to prevent or repel the unlawful aggression (Art. 11, par. 1 Revised Penal Code).

The evidence on record definitely establishes that the victim Tirso Abad actually fired his gun once at the appellant before the latter shot him.

On this point, petitioner testified during the trial that the victim Tirso Abad came out of the house of Mrs. Francisco to continue the fight. His testimony runs thus —

"Q

What happened?

A

I was looking at him when Caray said: "Nasa itaas."

Q

Referring to whom?

A

Tirso Abad.

Q

So what did you do?

A

After a few minutes I shouted: "Abad sumuko ka na," repeatedly.

Q

And sometime thereafter did Abad make any reply?

A

He answered and said: "Susuko na ako."

Q

What did you do when you heard him say: "Susuko na ako."

A

I crossed the other side of the street and went to the side of the jeep.

Q

Whose jeep was that?

A

The jeep where Tirso Abad boarded.

Q

That jeep was located where?

A

It was parked in front of the veranda of the house of Aling Miguela. In front of the truck, face to face

Q

Subsequent to that did you see Tirso Abad?

A

After a few minutes I saw him coming out.

Q

What was his condition at the time that he was coming out of the house?

A

When he was coming out as if he was groggy.

Q

And then what happened?

A

He was holding on his abdomen when he was coming out and staggering.

Q

Did you notice any gun in his hands at the time that he was coming out of the house?

A

None, Sir.

Q

Then later on what happened?

A

Suddenly he pointed the gun at me and fired.

Q

So what did you do?

A

I shot him two times.

Q

What happened when you shot him twice?

A

He was falling backward slowly."
(T.s.n., January 12, 1970, pp. 54-56)"

The accused was corroborated on this point by Benjamin Roldan whose testimony was summarized by the lower court as follows:

"He declared that at about 10:00 o'clock in the evening of November 22, 1969, he was about to go to the house of Ireneo Francisco to engage in a conversation. On his way to the house of Ireneo Francisco, just in front of the store opposite the said house of Ireneo Francisco, he suddenly heard gunshots. Because of fear, he jumped inside the store and lay face down.

After twenty minutes more or less, he heard a shout saying: "Abad, sumuko ka na at ikaw ay napapaligiran ng pulis."

What he did was to peep because he thought that everything calmed down and it was already safe. Then he heard a reply to the call to surrender, saying "OO susuko na ako." That was the time that he peeped.

When he peeped, he saw Borquilla by the side of the jeep, which was parked near the veranda of the house of Mrs. Francisco. He saw also that Tirso Abad was coming out of the veranda of Mrs. Francisco holding his stomach and his gun.

When Tirso Abad was already very near Borquilla, Tirso Abad fired his gun. Abad fired his gun towards his right. Borquilla was at the edge of the jeep. Borquilla was at the right side of Tirso Abad.

The witness lay face down again. After Tirso Abad fired his gun, he heard two more soft shots. The shot from the gun of Tirso Abad was louder than the last two gunshots.

A few minutes after the second shooting, he came out from his hiding place and saw that there were already people around." (Decision, pp. 50-51)".

This is further corroborated by the testimonies of Lt. Averia and examined Cpl. de Leon who both stated that where they examined the victim's gun, they found that there were six (6) cartridges in the cylinder of the gun and one (1) had been fired.

The evidence on record further shows that the two (2) medico legal experts — one presented by the prosecution and the other by the defense — perfectly agreed that all the gunshots wounds sustained by Tirso Abad, except for wound "No. 9" followed a downward path. The significance of this finding is that Tirso Abad, standing five feet and eight inches and taller than petitioner by about a half a foot, was crouching at the time the bullets hit the different parts of his body — definitely a fighting stance. This squarely belies the theory of the prosecution that when Tirso Abad was hit, at least by the last bullets, his body was either erect 90 degrees to the level of the ground, or reclining backwards 45 degrees to the level of the ground, or flat on the ground.

The said medico-legal experts also testified that all the wounds followed an oblique path, either from the right going left or vice versa. This supports the testimony of petitioner that after the first shot of Tirso Abad he swerved his body to the right, from which position he fired his gun. By the same token, when petitioner fired his last two (2) shots after the shot of Tirso Abad, he was standing obliquely to the right of Tirso Abad. Conformably, Tirso Abad's assailant (the petitioner) did not shoot at him face to face, negating the testimony of Cesar Abad and Antonio Basco that appellant shot Tirso Abad when they were exactly facing each other.

Considering the foregoing, from all indications it is clear that petitioner shot the victim twice in self-defense, after the latter, while pretending to surrender, shot the former. That there was reasonable necessity for petitioner to shoot the victim under the circumstances cannot be denied.

The last factor which We took into consideration in finding that the plea of self-defense is more credible is the lack of motive of the accused in attacking and killing the victim. We stated in a previous case (People vs. Boholst — Caballero, 61 SCRA 180) that although it is the general rule that the presence of motive in the killing of a person is not indispensable to a conviction especially where the identity of the assailant is duly established by other competent evidence or is not disputed, as in this case, nonetheless, the absence of such motive is important in ascertaining the truth as between two (2) antagonistic theories or versions of the killing. Herein, it was the victim who had reason to harm the accused. In passing it may even be stated that the victim's capacity and propensity for violence are established facts. The defense presented clear and convincing evidence showing this. And the prosecution never lifted a finger to refute such evidence proving the victim's violent character. At one

time, the victim attempted to overpower Pat. Manuel Cahanding who was then in a policeman's uniform and adequately armed. At the proclamation at the town hall, after having lost in a special election, he issued a challenge to a gunfight to no less than ten persons. On that fatal night, he went to N. de Ocampo Street armed with a high powered gun and carried extra-bullets in his fully packed ammunition belt. At that time, he was under the influence of liquor indicating that he was bent on making trouble.

After a painstaking review of the whole record of the case, We are convinced that all the elements of self-defense are present here. The evidence for the defense has proven clearly that the accused acted reasonably according to his instinct of self-preservation. The necessity of the killing committed by him exempts him from liability therefor. Upon the other hand, the evidence for the prosecution falls short of the requisite sufficiency and certainty which can persuade the human mind to agree with the conclusion of guilt.

WHEREFORE, the decision appealed from is REVERSED and SET ASIDE and another one is rendered acquitting the accused Ramon Borguilla, with costs de oficio.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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