

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. COURT OF APPEALS AND ELADIO C. TANGAN, RESPONDENTS.*G.R. No. 103613. February 23, 2001*

Ponente: YNARES-SANTIAGO, J.

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At around 11:30 p.m. of December 1, 1984, Navy Captain Eladio C. Tangan was driving alone on Roxas Boulevard heading south. He had just come from Buendia Avenue on an intelligence operation. At the same time, Generoso Miranda, a 29-year old optometrist, was driving his car in the same direction along Roxas Boulevard with his uncle, Manuel Miranda, after coming from the Ramada Hotel. Generoso was moving ahead of Tangan. Suddenly, firecrackers were thrown in Generoso's way, causing him to swerve to the right and cut Tangan's path. Tangan blew his horn several times. Generoso slowed down to let Tangan pass. Tangan accelerated and overtook Generoso, but when he got in front, Tangan reduced speed. Generoso tried four or five times to overtake on the right lane but Tangan kept blocking his lane. As he approached Airport Road, Tangan slowed down to make a U-turn. Generoso passed him, pulled over and got out of the car with his uncle. Tangan also stopped his car and got out. As the Mirandas got near Tangan's car, Generoso loudly retorted, "Putang ina mo, bakit mo ginigitgit ang sasakyan ko?" Generoso and Tangan then exchanged expletives. Tangan pointed his hand to Generoso and the latter slapped it, saying, "Huwag mo akong dinuduro! Sino ka ba, ano ba ang pinagmamalaki mo?" Tangan countered, "Ikaw, ano ang gusto mo?" With this, Tangan went to his car and got his .38 caliber handgun on the front seat. The subsequent events per account of the parties' respective witnesses were conflicting:

According to the prosecution witnesses, particularly, Mary Ann Borromeo, Rosalia Cruz and Manuel Miranda, the accused pointed his gun at Generoso Miranda and when Manuel Miranda tried to intervene, the accused pointed his gun at Manuel Miranda, and after that the accused pointed again the gun to Generoso Miranda, the accused shot Generoso Miranda at a distance of about a meter but because the arm of the accused was extended, the muzzle of the gun reached to about more or less one foot away from the body of Generoso Miranda. The shot hit the stomach of Generoso Miranda causing the latter to fall and while still conscious, Generoso Miranda told Manuel Miranda, his uncle, to get the gun. Manuel Miranda grappled for the possession of the gun and during their grappling, Rosalia Cruz intervened and took hold of the gun and after Rosalia Cruz has taken hold of the gun, a man wearing a red T-shirt took the gun from her. The man in T-shirt was chased by Manuel Miranda who was able to get the gun where the man in red T-shirt placed it.

On the other hand, the defense, particularly the accused and his witness by the name of Nelson Pante claimed that after the gun was taken by the accused from inside his car, the Mirandas started to grapple for possession of the gun and during the grappling, and while the two Mirandas were trying to wrest away the gun from the accused, they fell down at the back of the car of the accused. According to the accused, he lost the possession of the gun after falling at the back of his car and as soon as they hit the ground, the gun fell, and it exploded hitting Generoso Miranda.[1]

After the gun went off, Tangan ran away. Meanwhile, Generoso lay on the ground bloodied. His uncle, Manuel, looked for the gun and ran after Tangan, joining the mob that had already pursued him. Tangan found a policeman

who allowed him to enter his patrol car. Manuel arrived and told the policeman that Tangan had just shot his nephew. Then he went back to where Generoso lay and there found two ladies, later identified as Mary Ann Borromeo and Rosalina Cruz, helping his nephew board a taxi. Manuel suggested that Generoso be brought to the hospital in his car. He was rushed to the Philippine General Hospital but he expired on the way.

Tangan was charged with the crime of murder with the use of an unlicensed firearm.[2] After a reinvestigation, however, the information was amended to homicide with the use of a licensed firearm,[3] and he was separately charged with illegal possession of unlicensed firearm.[4] On arraignment, Tangan entered a plea of not guilty in the homicide case, but moved to quash the information for illegal possession of unlicensed firearm on various grounds. The motion to quash was denied, whereupon he filed a petition for certiorari with this Court.[5] On November 5, 1987, said petition was dismissed and the joint trial of the two cases was ordered.[6]

During the trial, the prosecution and the defense stipulated on the following: that the amount of P126,000.00 was incurred for the funeral and burial expenses of the victim;[7] that P74,625.00 was incurred for attorneys fees; and that the heirs of Generoso suffered moral damages, the amount of which is left for the courts to determine. After trial, the lower court acquitted Tangan of illegal possession of firearm, but convicted him of homicide. The privileged mitigating circumstance of incomplete self-defense and the ordinary mitigating circumstances of sufficient provocation on the part of the offended party and of passion and obfuscation were appreciated in his favor; consequently, the trial court ordered him to suffer an indeterminate penalty of two (2) months of arresto mayor, as minimum, to two (2) years and four (4) months of prision correccional, as maximum, and to indemnify the heirs of the victim.[8] Tangan was released from detention after the promulgation of judgment[9] and was allowed bail in the homicide case.

Private complainants, the heirs of Generoso Miranda, filed a petition for review with this Court, docketed as G.R. No. 102677, challenging the civil aspect of the court a quo's decision, but the same was dismissed for being premature. On the other hand, Tangan appealed to the Court of Appeals, which affirmed the judgment of the trial court but increased the award of civil indemnity to P50,000.00.[10] His subsequent motion for reconsideration and a motion to cite the Solicitor General in contempt were denied by the Court of Appeals.[11]

The Office of the Solicitor General, on behalf of the prosecution, alleging grave abuse of discretion, filed a petition for certiorari under Rule 65, docketed as G.R. No. 103613, naming as respondents the Court of Appeals and Tangan, where it prayed that the appellate court's judgment be modified by convicting accused-appellant of homicide without appreciating in his favor any mitigating circumstance.[12] Subsequently, the Office of the Solicitor General, this time acting for public respondent Court of Appeals, filed a motion for extension to file comment to its own petition for certiorari.[13] Discovering its glaring error, the Office of the Solicitor General later withdrew its motion for extension of time.[14] Tangan filed a Reply asking that the case be submitted for decision.[15]

Meanwhile, Tangan filed a separate petition for review under Rule 45, docketed as G.R. No. 105830.[16] Since the petition for certiorari filed by the Solicitor General remained unresolved, the two cases were consolidated.[17] The Office of the Solicitor General filed a manifestation in G.R. No. 105830, asking that it be excused from filing a comment to Tangan's petition for review, in order to avoid taking contradictory positions.[18]

In the recent case of *People v. Velasco and Galvez*,[19] we held that the prosecution cannot avail of the remedies of special civil action on certiorari, petition for review on certiorari, or appeal in criminal cases. Previous to that, we categorically ruled that the writ of certiorari cannot be used by the State in a criminal case to correct a lower court's factual findings or evaluation of the evidence.[20]

Rule 117, Section 7, of the Revised Rules of Criminal Procedure, is clear:

Former conviction or acquittal; double jeopardy. - When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

However, the conviction of the accused shall not be a bar to another prosecution for an offense which necessarily includes the offense charged in the former complaint or information under any of the following instances:

- (a) the graver offense developed due to supervening facts arising from the same act or omission constituting the former charge;
- (b) the facts constituting the graver charge became known or were discovered only after a plea was entered in the former complaint or information; or
- (c) the plea of guilty to the lesser offense was made without the consent of the fiscal and of the offended party, except as provided in section 1(f) of Rule 116.

In any of the foregoing cases, where the accused satisfies or serves in whole or in part the judgment, he shall be credited with the same in the event of conviction for the graver offense.

Based on the foregoing, the Solicitor General's petition for certiorari under Rule 65, praying that no mitigating circumstance be appreciated in favor of accused-appellant and that the penalty imposed on him be correspondingly increased, constitutes a violation of Tangan's right against double jeopardy and should be dismissed.

We now come to the petition for review filed by Tangan. It is noteworthy that during the trial, petitioner Tangan did not invoke self-defense but claimed that Generoso was accidentally shot. As such, the burden of proving self-defense,[21] which normally would have belonged to Tangan, did not come into play. Although Tangan must prove his defense of accidental firing by clear and convincing evidence,[22] the burden of proving the commission of the crime remained in the prosecution.

Both the trial court and the Court of Appeals appreciated in favor of Tangan the privileged mitigating circumstance of incomplete self-defense under Article 13 (1), in relation to Article 11 (1), of the Revised Penal Code, to wit:

ARTICLE 11. Justifying circumstances. - The following do not incur any criminal liability:

- Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First Unlawful aggression.

Second Reasonable necessity of the means employed to prevent or repel it.

Third Lack of sufficient provocation on the part of the person defending himself.

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ARTICLE 13. Mitigating Circumstances. - The following are mitigating circumstances:

- Those mentioned in the preceding Chapter, when all the requisites necessary to justify the act or to exempt from criminal liability in the respective cases are not attendant.

Incomplete self-defense is not considered as a justifying act, but merely a mitigating circumstance; hence, the burden of proving the crime charged in the information is not shifted to the accused.[23] In order that it may be successfully appreciated, however, it is necessary that a majority of the requirements of self-defense be present, particularly the requisite of unlawful aggression on the part of the victim.[24] Unlawful aggression by itself or in combination with either of the other two requisites suffices to establish incomplete self-defense. Absent the unlawful aggression, there can never be self-defense, complete or incomplete,[25] because if there is nothing to prevent or repel, the other two requisites of defense will have no basis.[26]

There is no question that the bullet which hit the victim was fired from the caliber. 38, which was issued to Tangan by the Philippine Navy. The cause of death was severe hemorrhage secondary to gunshot wound of the abdomen, caused by the bullet fired from a gun of the said caliber. The prosecution claimed that Tangan shot the victim point-blank in the stomach at a distance of about one foot. On the other hand, Tangan alleged that when he grappled with Generoso and Manuel Miranda for possession of the gun, it fell to the ground and accidentally fired, hitting the victim.

When the testimonies of witnesses in open court are conflicting in substantial points, the calibration of the records on appeal becomes difficult. It is the word of one party against the word of the other. The reviewing tribunal relies on the cold and mute pages of the records, unlike the trial court which had the unique opportunity of observing first-hand that elusive and incommunicable evidence of the witness' deportment on the stand while testifying.[27] The trial court's assessments of the credibility of witnesses is accorded great weight and respect on appeal and is binding on this Court,[28] particularly when it has not been adequately demonstrated that significant facts and circumstances were shown to have been overlooked or disregarded by the court below which, if considered, might affect the outcome hereof.[29] The rationale for this has been adequately explained in that,

The trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, and carriage and mien.[30]

Equally, when a person fabricates a story, he usually adopts a simple account because a complex one might lead to entanglement from which he may find it hard to extricate himself. Along the same line, the experience of the courts and the general observations of humanity teach us that the natural limitations of our inventive faculties are such that if a witness delivers in court a false narrative containing numerous details, he is almost certain to fall into fatal inconsistencies, to make statements which can be readily refuted, or to expose in his demeanor the falsity of his message.[31] Aside from this, it is not also unusual that the witness may have been coached before he is called to the stand to testify.

Somewhere along the painstaking review of the evidence on record, one version rings the semblance of truth, not necessarily because it is the absolute truth, but simply because it is the best approximation of the truth based on the declarations of witnesses as corroborated by material evidence. Perforce, the other version must be rejected. Truth and falsehood, it has been well said, are not always opposed to each other like black and white, but oftentimes, and by design, are made to resemble each other so as to be hardly distinguishable.[32] Thus, after analyzing the conflicting testimonies of the witnesses, the trial court found that:

When the accused took the gun from his car and when he tried to get out of the car and the two Mirandas saw the accused already holding the gun, they started to grapple for the possession of the gun that it went off hitting Generoso Miranda at the stomach. The court believes that contrary to the testimony of the accused, he never

lost possession of the gun for if he did and when the gun fell to the ground, it will not first explode or if it did, somebody is not holding the same, the trajectory of the bullet would not be perpendicular or horizontal.[33]

The Court of Appeals agreed -

The finding of the lower court that Generoso Miranda III was shot while the accused and the Mirandas were grappling for the possession of the gun immediately after the accused had taken his gun from inside his car and before the three allegedly fell to the ground behind the car of the accused is borne out by the record. The court also agrees with the court below that it was the accused-appellant who shot and killed Generoso Miranda III. If the accused-appellant did not shoot Generoso III during the scuffle, he would have claimed accidental killing by alleging that his gun exploded during the scuffle instead of falsely testifying that he and the Mirandas fell to the ground behind his car and the gun exploded in the possession of Manuel Miranda. The theory of the prosecution that the shooting took place while the three were grappling for the possession of the gun beside the car of appellant is completely in harmony with the findings and testimony of Dr. Ibarrola regarding the relative position of the three and the precarious nearness of the victim when accused-appellant pulled the trigger of his gun. Dr. Ibarrola explained that the gun was about two (2) inches from the entrance wound and that its position was almost perpendicular when it was fired. It was in fact the closeness of the Mirandas vis-à-vis appellant during the scuffle for the gun that the accused-appellant was compelled to pull the trigger in answer to the instinct of self-preservation.[34]

No convincing reason appears for the Court to depart from these factual findings, the same being ably supported by the evidence on record. In violent deaths caused by gunshot wounds, the medical report or the autopsy on the cadaver of the victim must as much as possible narrate the observations on the wounds examined. It is material in determining the truthfulness of the events narrated by the witnesses presented. It is not enough that the witness looks credible and assumes that he indeed witnessed the criminal act. His narration must be substantiated by the physical evidence available to the court.

The medical examiner testified that the distance between the muzzle of the gun and the target was about 2 inches but definitely not more than 3 inches. Based on the point of exit and the trajectory transit of the wound, the victim and the alleged assailant were facing each other when the shot was made and the position of the gun was almost perpendicular when fired.[35] These findings disprove Tangan's claim of accidental shooting. A revolver is not prone to accidental firing because of the nature of its mechanism, unless it was already first cocked and pressure was exerted on the trigger. If it were uncocked, then considerable pressure had to be applied on the trigger to fire the revolver.[36]

Having established that the shooting was not accidental, the next issue to be resolved is whether Tangan acted in incomplete self-defense. The element of unlawful aggression in self-defense must not come from the person defending himself but from the victim.

A mere threatening or intimidating attitude is not sufficient.[37] Likewise, the exchange of insulting words and invectives between Tangan and Generoso Miranda, no matter how objectionable, could not be considered as unlawful aggression, except when coupled with physical assault.[38] There being no lawful aggression on the part of either antagonists, the claim of incomplete self-defense falls. Tangan undoubtedly had possession of the gun, but the Mirandas tried to wrestle the gun from him. It may be said that the former had no intention of killing the victim but simply to retain possession of his gun. However, the fact that the victim subsequently died as a result of the gunshot wound, though the shooter may not have the intention to kill, does not absolve him from culpability. Having caused the fatal wound, Tangan is responsible for all the consequences of his felonious act. He brought out the gun, wrestled with the Mirandas but anticipating that the gun may be taken from him, he fired and fled.

The third requisite of lack of sufficient provocation on the part of the person defending himself is not supported

by evidence. By repeatedly blocking the path of the Mirandas for almost five times, Tangan was in effect the one who provoked the former. The repeated blowing of horns, assuming it was done by Generoso, may be irritating to an impatient driver but it certainly could not be considered as creating so powerful an inducement as to incite provocation for the other party to act violently.

The appreciation of the ordinary mitigating circumstances of sufficient provocation and passion and obfuscation under Article 13, paragraphs 4 and 6,[39] have no factual basis. Sufficient provocation as a requisite of incomplete self-defense is different from sufficient provocation as a mitigating circumstance. As an element of self-defense, it pertains to its absence on the part of the person defending himself; while as a mitigating circumstance, it pertains to its presence on the part of the offended party. Besides, only one mitigating circumstance can arise out of one and the same act.[40] Assuming for the sake of argument that the blowing of horns, cutting of lanes or overtaking can be considered as acts of provocation, the same were not sufficient. The word "sufficient" means adequate to excite a person to commit a wrong and must accordingly be proportionate to its gravity.[41] Moreover, Generoso's act of asking for an explanation from Tangan was not sufficient provocation for him to claim that he was provoked to kill or injure Generoso.[42]

For the mitigating circumstance of passion and obfuscation to be appreciated, it is required that (1) there be an act, both unlawful and sufficient to produce such a condition of mind; and (2) said act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity.[43]

In the case at bar, Tangan could not have possibly acted upon an impulse for there was no sudden and unexpected occurrence which would have created such condition in his mind to shoot the victim. Assuming that his path was suddenly blocked by Generoso Miranda due to the firecrackers, it can no longer be treated as a startling occurrence, precisely because he had already passed them and was already the one blocking their path. Tangan's acts were done in the spirit of revenge and lawlessness, for which no mitigating circumstance of passion or obfuscation can arise.

With respect to the penalty, under the laws then existing, homicide was penalized with reclusion temporal,[44] but if the homicide was committed with the use of an unlicensed firearm, the penalty shall be death.[45] The death penalty, however, cannot be imposed on Tangan because in the meantime, the 1987 Constitution proscribed the imposition of death penalty; and although it was later restored in 1994, the retroactive application of the death penalty is unfavorable to him. Previously, the accused may be prosecuted for two crimes: (1) homicide or murder under the Revised Penal Code and (2) illegal possession of firearm in its aggravated form under P.D. 1866.[46]

P.D. 1866 was amended by R.A. No. 8294,[47] which provides that if an unlicensed firearm is used in murder or homicide, such use of unlicensed firearm shall be appreciated as an aggravating circumstance and no longer considered as a separate offense,[48] which means that only one offense shall be punished - murder or homicide. However, this law cannot apply retroactively because it will result in the imposition on Tangan of the maximum period of the penalty. Moreover, under Rule 110, Section 8 of the Revised Rules of Criminal Procedure,[49] the aggravating circumstance must be alleged in the information. Being favorable, this new rule can be given retroactive effect as they are applicable to pending cases.[50] In any case, Tangan was acquitted of the illegal possession case.

Consequently, Tangan should be sentenced to suffer the penalty of reclusion temporal. Pursuant to Article 64 of the Revised Penal Code, if the prescribed penalty is composed of three periods, and there is neither mitigating nor aggravating circumstance, the medium period shall be applied. Applying the Indeterminate Sentence law, the maximum of the indeterminate penalty shall be that which, in view of the attendant circumstances, may be

properly imposed, which in this case is reclusion temporal medium with an imprisonment range of from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. The minimum of the indeterminate sentence shall be the next lower degree which is prision mayor with a range of from six (6) years and one (1) day to twelve (12) years.[51] Hence, petitioner Tangan is sentenced to an indeterminate penalty of six (6) 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.

The death indemnity of P30,000.00 was correctly increased by the appellate court to P50,000.00 in line with jurisprudence.[52] Moral damages are awarded in criminal cases involving injuries if supported by evidence on record,[53] but the stipulation of the parties in this case substitutes for the necessity of evidence in support thereof. Though not awarded below, the victim's heirs are entitled to moral damages in the amount of P50,000.00 which is considered reasonable considering the pain and anguish brought by his death.[54]

WHEREFORE, the petition in G.R. No. 103613 is DISMISSED. The appealed decision subject of G.R. No. 105830 is AFFIRMED with the following MODIFICATIONS:

- (1) Tangan is sentenced to suffer an indeterminate penalty of six (6) 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, with all the accessory penalties.
- (2) Tangan is ordered to pay the victim's heirs P50,000.00 as civil indemnity, P42,000.00 as funeral and burial expenses, P5,000.00 as attorney's fees, and P50,000.00 as moral damages.

SO ORDERED.

Davide, Jr., C.J., Puno, Kapunan, and Pardo, JJ., concur.

[1] Rollo in G.R. No. 105830, pp. 125-126.

[2] Criminal Case No. T-17587; "That on or about the 1[st] day of December, 1984, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named with intent to kill, with treachery and with the use of an unlicensed firearm, did then and there willfully, unlawfully and feloniously attack, assault and shot Generoso Miranda III, thereby inflicting upon his mortal gunshot wounds which directly caused his death, contrary to law." (Rollo in G.R. No. 105830, p. 12).

[3] The Amended Information reads: "That on or about the 1[st] day of December, 1984, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named with intent to kill and armed with a gun, did then and there willfully, unlawfully and feloniously attack, assault and shot with the said firearm (licensed) one Generoso Miranda III, thereby hitting the latter in the abdomen and inflicting upon him mortal gunshot wounds which directly caused his death, contrary to law." (Rollo in G.R. No. 105830, p. 12).

[4] Criminal Case No. T-19350: "That on or about the 1[st] day of December, 1984, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court the above-named accused willfully and feloniously have in possession, custody and control a Smith and Wesson Cal. 38 revolver with Serial No. C61898 (Yoke No. 7566) and five (5) live ammunitions and one (1) empty shell without having procured the corresponding license or permit therefor and which the said accused used in the commission of the crime of homicide against the person of Generoso Miranda III, contrary to law." (Rollo in G.R. No. 105830, p. 13).

[5] G.R. No. L-73963.

[6] *Tangan v. People*, 155 SCRA 435 (1987).

[7] *Rollo*, p. 105.

[8] The dispositive portion of the Regional Trial Court Decision dated August 16, 1989 penned by Judge xxxx reads: "WHEREFORE, premises considered in Criminal Case No. 178587 for the crime of Homicide defined and penalized under Article 249 of the Revised Penal Code with the attendance of the privileged mitigating circumstances of incomplete self defense and ordinary mitigating circumstances of sufficient provocation on the part of the offended party, and passion and obfuscation. For which reason, the accused is hereby sentenced to suffer an indeterminate prison term of two (2) months of ARRESTO MAYOR, as minimum to two (2) years and four (4) months of PRISION CORRECCIONAL, as maximum, with all the accessories of the law.

The preventive confinement of the accused shall be credited full time in his favor.

The accused is further ordered to pay to the heirs of Generoso Miranda namely, Ruby Miranda and Maria Miranda the following:

- P30,000.00 for and as indemnity for causing the death of Generoso Miranda;
- P42,000.00 for funeral burial and other related expenses;
- P5,000.00 as attorney's fees.

Costs against the accused.

With respect to Criminal Case No. 19350 for Illegal Possession of Firearms and ammunitions Used in the Commission of Homicide, and finding the accused innocent to the charge against him, he is hereby ACQUITTED." (*Rollo* in G.R. No. 105830, p. 14).

[9] Illegal possession of firearms and homicide with the use of unlicensed firearm are generally non-bailable offenses under the 1973 Constitution which was in force at the time of the commission of the crimes herein.

[10] The dispositive portion of the CA Decision dated October 30, 1991, penned by Justice Cacdac, Jr. with Justices de Pano, Jr. and Guingona, concurring consisting of 51-single space pages reads: "WHEREFORE, the decision appealed from is hereby MODIFIED with respect to the indemnity for the death of the victim Generoso Miranda in the amount of P50,000.00.

In all other respects, the appealed decision is affirmed. Costs against accused-appellant.

SO ORDERED." (*Rollo* in G.R. No. 105830, p. 131).

[11] CA Resolution promulgated June 23, 1992 penned by Justice De Pano, Jr., with Justices Guingona and Garcia, concurring; *Rollo* in G.R. No. 105830, pp. 133-136.

[12] Petition for Certiorari filed by the Solicitor General (Francisco Chavez); *Rollo* in G.R. No. 103613, pp. 105-106.

[13] The several motions for extension filed by the Office of the Solicitor General were signed by Solicitor General Ramon S. Desuasido and the other by Acting Solicitor General Eduardo G. Montenegro.

[14] Comment signed by Solicitor General Montenegro dated July 22, 1992; *Rollo* in G.R. No. 103613, p. 407.

[15] Reply to Comment dated September 28, 1992 filed by private respondent in G.R. No. 103613, *Rollo*, p. 412

- [16] Petition for Review, pp. 1-71; Rollo in G.R. No. 105830, pp. 7-77.
- [17] Rejoinder in G.R. No. 103613 of the new Solicitor General (Raul Goco) dated November 25, 1992, p. 3; Rollo, p. 422.
- [18] Manifestation and Motion by the Office of the Solicitor General (Raul Goco) dated December 2, 1992, p. 3; Rollo in G.R. No. 105830, p. 264.
- [19] G.R. No. 127444, September 13, 2000.
- [20] Soriano v. Hon. Angeles, G.R. No. 109920, August 31, 2000.
- [21] People v. Galapin, 293 SCRA 474 (1998); People v. Timblor, 285 SCRA 64 (1998).
- [22] People v. Arroyo, 111 SCRA 689 (1982); People v. Capitania, 49 Phil. 475.
- [23] Rule 119, Section 3. Order of trial. -- The trial shall proceed in the following order:
- x x x x x x x x
- (e) However, when the accused admits the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified accordingly.
- [24] See People v. Navarro, 7 Phil. 713; People v. Martin, 89 Phil. 18.
- [25] People v. Sazon, 189 SCRA 700 (1990); Ortega v. Sandiganbayan, 170 SCRA 38 (1989); People v. Picardal, 151 SCRA 170 (1987).
- [26] People v. Yuman, 61 Phil. 786.
- [27] People v. Mahinay, G.R. No. 122485, February 1, 1999.
- [28] People v. Mamalayan, 280 SCRA 748 (1997); People v. Jagolingay, 280 SCRA 768 (1997); Rabaja v. CA, 280 SCRA 290 (1997); Padilla v. CA, 269 SCRA 402 (1997).
- [29] People v. Dizon, G.R. No. 126044-45, July 2, 1999.
- [30] People v. Alitagtag, G.R. Nos. 124449-51, June 29, 1999 citing People v. Quijada, 259 SCRA 191, 212-213 [1996].
- [31] People v. San Juan, G.R. No. 130969, February 29, 2000 citing People v. Gana, Jr., 265 SCRA 260 (1996) and US v. Burns, 41 Phil. 418.
- [32] Johnson v. Emerson, (1871).
- [33] Rollo in G.R. No. 105830, p. 126.
- [34] CA Decision, dated October 30, 1991, p. 49; Rollo in G.R. No. 105830, p. 129.
- [35] Rollo, p. 84.
- [36] People v. Reyes, 69 SCRA 475 (1976).
- [37] People v. Pasco, Jr., 137 SCRA 137 (1985); People v. Rey, 172 SCRA 149 (1989).
- [38] U.S. v. Carrero, 9 Phil. 544.
- [39] Article 13. The following are mitigating circumstances:

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- that sufficient provocation or threat on the part of the offended party immediately preceded the act.

X X X X X X X X

- that of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.

[40] People v. delos Santos, 85 Phil. 870.

[41] People v. Nabora, 73 Phil. 434.

[42] See People v. Laude, 58 Phil. 933.

[43] I Reyes, The Revised Penal Code, p. 272 (1998).

[44] Article 249, Revised Penal Code. The penalty for homicide was not changed by R.A. No. 7659 though another law (Section 10, R.A. No. 7610) provides that if the victim is under 12 years of age, the penalty shall be one degree higher.

[45] P.D. 1866.

[46] Pursuant to the old provisions of Section 1, P. D. 1866 and the court's ruling in People v. Quijada, 328 Phil. 505 (1996).

[47] An act amending the provisions of P.D. 1866, as amended, entitled "Codifying the laws on illegal/unlawful possession, manufacture, dealing in, acquisition or distribution of firearms, ammunitions, or explosives or instruments used in the manufacture of firearms, ammunitions or explosives and imposing stiffer penalties for certain violations thereof and for relevant purposes." (Took effect July 6, 1997).

[48] People v. Nepomuceno, Jr., G.R. No. 130800, June 29, 1999 citing People v. Bergante, 286 SCRA 629 (1998); People v. Narvasa, 298 SCRA 637 (1998); People v. Molina, 292 SCRA 742 (1998).

[49] Took effect December 1, 2000.

[50] See Oriental Assurance v. Solidbank, G.R. No. 139882, August 16, 2000.

[51] People v. Acuram, G.R. No. 117954, April 27, 2000.

[52] People v. Pedroso, G.R. No. 125128, July 19, 2000.

[53] People v. Cayago, G.R. No. 128827, August 18, 1999 citing People v. Arguelles, 222 SCRA 166 (1993).

[54] People v. Reynaldo Langit, G.R. Nos. 134757-58, August 4, 2000; People v. Mindanao, G.R. No. 123095, July 6, 2000.

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