

ELADIO C. TANGAN, PETITIONER, VS. THE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 105830. January 15, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

On February 23, 2001, this Court rendered a Decision as follows:

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, 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.

Petitioner Eladio C. Tangan filed a Motion for Reconsideration, invoking the rule that factual findings of the trial court and the Court of Appeals are binding on this Court. Thus, he argues that this Court erred in disregarding the mitigating circumstances which were appreciated by the lower courts and in raising the indeterminate penalty imposed on him from a maximum of two years and four months of prision correccional to a maximum of fourteen years, eight months and one day of reclusion temporal. This, he claims, exposed him to the "horrifying reality" of being re-incarcerated after having been preventively confined for more than four years.[1]

It bears stressing that at no time during the trial of the case did petitioner raise self-defense. Nevertheless, the trial court and the Court of Appeals found the attendance of the mitigating circumstances of incomplete self-defense, sufficient provocation, and passion and obfuscation.

When petitioner appealed the decision, he threw open the whole case for review. It became the duty of this Court to correct any error as may be found in the appealed judgment, whether it was made the subject of assignment of errors or not.[2]

Thus, this Court reviewed the records of the case and found that the evidence fails to support or substantiate the lower court's findings and conclusions. Clearly, therefore, this case falls within the recognized exceptions to the rule that an appellate court will generally not disturb the assessment of the trial court on factual matters considering that the latter, as a trier of fact, is in a better position to appreciate the same.[3]

First of all, the physical evidence belies petitioner's version of the incident. As we clearly explained in our assailed Decision:

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 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. 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 were uncocked, then considerable pressure had to be applied on the trigger to fire the revolver.[4]

Physical evidence is a mute but eloquent manifestation of truth, and it ranks high in the hierarchy of our trustworthy evidence.[5] For this reason, it is regarded as evidence of the highest order. It speaks more eloquently than a hundred witnesses.[6]

The physical evidence is amply corroborated by the eyewitness accounts of Rosalia dela Cruz and Mary Ann Borromeo to the effect that petitioner took a gun from his car and suddenly fired it at the deceased.[7]

Likewise, this Court found that the mitigating circumstances appreciated by the trial court are not present. Petitioner refutes this and insists on his version of the facts. However, the testimony of his witness, on which he heavily relies, suffers from material inconsistencies which render it unworthy of belief.

It was shown that defense witness Nelson Pante was 10 meters away when he saw the incident, and his line of vision was blocked by petitioner's car.[8] From that distance and vantage point, he could not have heard anything or have had an unobstructed view of the events. Sure enough, the details of his statement betray the falsity thereof. He testified that petitioner was hit on the eyebrow, while petitioner said he was hit on the jaw.[9] Pante was also unable to identify Manuel Miranda, the person whom he supposedly saw punch petitioner.[10]

All of these, and the incredibility of petitioner's account when compared with the physical evidence, belie self-defense. From the established facts, it can be plainly gleaned that there was no unlawful aggression on the part of the deceased. What merely transpired before petitioner's gun went off was a heated exchange of words between the protagonists. This does not qualify as unlawful aggression. Unlawful aggression presupposes an actual, sudden, and unexpected attack, or imminent danger thereof. The person defending himself must have been attacked with actual physical force or with actual use of weapon.[11]

Unlawful aggression is a condition sine qua non for the justifying circumstance of self-defense. There can be no self-defense, complete or incomplete, unless the victim has committed an unlawful aggression against the person defending himself.[12]

By the same token, the evidence does not show the attendance of the mitigating circumstance of sufficient provocation on the part of the offended party. As stated, the provocation must be sufficient to excite a person to commit a wrong and must accordingly be proportionate to its gravity. In this case, all that the deceased did immediately before he was shot was shout expletives and slap petitioner's hand when the latter pointed it to his face. These acts, while offensive, were grossly disproportionate to petitioner's act of drawing and firing of a gun.

Furthermore, there was no sudden and unexpected occurrence that could have naturally produced a powerful excitement in petitioner's mind causing him to lose his reason and self-control. As shown by the facts, no passion and obfuscation could have clouded his mind.

On the whole, therefore, this Court correctly imposed on petitioner the proper penalty for Homicide, without the attendance of any mitigating or aggravating circumstance, and sentenced him 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, maximum.

While his Motion for Reconsideration was pending, petitioner filed with the Court an "Omnibus Motion to Re-Raffle/Transfer and/or to Recuse." He alleged, among others, that the ponente of the assailed Decision is biased in favor of respondents and, therefore, must recuse herself from this case. Petitioner's accusation,

however, is based on nothing more than this Court's own evaluation of the evidence and departure from the rule that findings of facts of lower court are not to be disturbed.

Petitioner should bear in mind that the Decision, although penned by a member of the Court, is a decision of the whole Court. Hence, any attack on the integrity of the ponente, or any member of the Court for that matter, is an attack on the entire Court. More importantly, petitioner fails to establish with concrete proof his imputations of bias. Such irresponsible and unfounded statements will not be taken lightly by this Court. Hence, petitioner and his counsel should be admonished for making such baseless and unsubstantiated accusations of bias against the Court. Moreover, the Omnibus Motion should be denied for lack of merit.

Petitioner faults the Court for increasing the penalty five times such that, despite having served the penalty imposed by the trial court, he now faces the "intolerable specter of reincarceration." [13] It should be recalled that petitioner, by consciously and deliberately firing his gun, snuffed the life out of a 29-year old optometrist. Suffice it to state that petitioner should bear the consequences of his felonious act.

WHEREFORE, in view of the foregoing, the Motion for Reconsideration is DENIED for lack of merit. The Omnibus Motion to Re-Raffle/Transfer and/or to Recuse is likewise DENIED. This denial is FINAL.

SO ORDERED.

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

[1] Rollo, G.R. No. 105830, pp. 296-297.

[2] *People v. De Leon*, G.R. No. 126287, April 16, 2001; *People v. Lucero*, G.R. No. 102407-08, March 26, 2001; *People v. Taguba*, G.R. No. 112792-93, October 6, 2000.

[3] *People v. Balano*, G.R. No. 138474, March 28, 2001; *People v. Naag*, G.R. No. 136394, February 15, 2001; *People v. Limon*, 306 SCRA 367, 372372-373 [1999].

[4] Decision, p. 11.

[5] *People v. Tan*, G.R. Nos. 116200-02, June 21, 2001.

[6] *People v. Silvano*, G.R. No. 125923, January 31, 2001.

[7] TSN, August 30, 1988, pp. 13, 23-25; September 14, 1988, pp. 13-15, 27.

[8] TSN, October 20, 1988, pp. 64-65.

[9] *Ibid.*, p. 68.

[10] *Ibid.*, pp. 22-23.

[11] *People v. Caguing*, G.R. No. 139822, December 6, 2000.

[12] *People v. Flores*, G.R. No. 138841, April 4, 2001.

[13] Omnibus Motion to Re-Raffle/Transfer and/or to Recuse, p. 2.

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