

ULDARICO ESCOTO, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 118002. September 05, 1997

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

ULDARICO ESCOTO, a security guard, was charged with homicide for killing his head guard Eugenio Tuangson. Escoto invoked self-defense but was not sustained by the trial court. He was convicted instead. His conviction was affirmed by the Court of Appeals. He now comes to us on a petition for review.

On 14 May 1993 a security guard of the Pioneer Security Agency, a certain Mantela, resigned from his job at Allied Bank in Cebu City. Uldarico Escoto, another security guard of the same agency, manifested his interest in the position to his head guard, Eugenio Tuangson, who was in charge of the guards' assignments. Escoto wanted Mantela's post as it provided for a twelve-hour work every day including weekends, while his own working hours were only eight hours per day excluding Saturday and Sunday. Being the most senior of the security guards Escoto was confident he would get the assignment. Tuangson agreed to give the post to him but asked for P2,000.00 as grease money. In his earnestness to get the new post so he could earn more for his family, Escoto gave Tuangson the amount immediately the following day. However, on 16 May 1993 Escoto learned that the job was given to Jessie Bienavenida, another security guard. Feeling aggrieved, Escoto confronted Tuangson why the post was given to somebody else but the latter implored him to calm down as the job could still be his come 21 May 1993. On 23 May 1993 Escoto again confronted Tuangson and a heated argument ensued. In the process Escoto shot Tuangson. It proved to be fatal.

Charged with homicide before the Regional Trial Court of Cebu accused Uldarico Escoto pleaded not guilty and invoked the justifying circumstance of self-defense. But the trial court was not persuaded. It convicted Escoto of homicide but appreciated in his favor the mitigating circumstances of passion and obfuscation, and voluntary surrender, and accordingly sentenced him to suffer the indeterminate penalty of five (5) years of prision correccional as minimum to ten (10) years of prision mayor as maximum, and to indemnify the heirs of Tuangson in the amount of P30,000.00. [1]

The Court of Appeals affirmed the factual findings and conclusion of the court a quo. But upon motion for partial reconsideration by the prosecution the appellate court increased the indemnity for the death of Eugenio Tuangson from P30,000.00 to P50,000.00, and awarded additionally P40,000.00 for actual damages.

Escoto now claims that the trial court as well as the appellate court misunderstood, hence misapplied, the concept of self-defense.

Self-defense as a justifying circumstance is present when the following concur: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and, (c) lack of sufficient provocation on the part of the person defending himself. The lower courts were one in their finding that there was absence of unlawful aggression on the part of Tuangson and that, on the contrary, it was Escoto who appeared to

be the aggressor. Quite understandably, Escoto was so disappointed for failing to get the promised post after he gave Tuangson the grease money that the latter demanded. His frustration could indeed have worsened when after asking for his money back he was told by Tuangson that recovery was out of the question as he had already spent it.

Having confessed to the killing of Tuangson, it was incumbent upon the accused to prove clearly and sufficiently the elements of self-defense otherwise his conviction will have to be affirmed. Thus Escoto testified -

Uldarico Escoto:

I approached him and then told him this, 'Bay, you just tell me whether I will get the position or not.'

Atty. Remotique:

At the time you told him that, what was your position, were you standing up, or sitting or whatever?

A: I was standing.

Q: How about Eugenio Tuangson, what was his position?

A: He was sitting.

Q: Sitting on what?

A: On a chair.

Q: At that time was Eugenio Tuangson also armed?

A: Yes.

Q: What was his firearm?

A: .38.

Q: Where did he place it?

A: On the holster.

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Q: When you saw Mr. Eugenio Tuangson sitting on a bench you told him, 'Bay make it clear to me whether I can get the position or not.' What was the reply of Mr. Tuangson?

A: He said, 'You just wait, anyway we are here. Just . . . You are very insistent.'

Q: And when you heard that, what did you do or say to Eugenio Tuangson?

A: I told him, 'Your promise was on the 21st and now it is the 23rd.'

Q: After that, what else transpired between you?

A: Then further, I told him, 'As if this is not clear to me, Bay, you just return the money I gave you.'

Q: You mean the P2,000.00?

A: Yes.

Q: And then, what was the reply of Mr. Eugenio Tuangson?

A: He said, 'Are you crazy? Why are you going to get back the money when I am going to give you the position?'

Q: After that, what did you do or say?

A: I said, 'You just give me back the money, Bay. What is the date now?'

Q: And then, what else transpired?

A: Since I insisted, he told me that the money I gave him was already spent by him.

Q: When he informed you that the money you gave him was already spent by him, what did you do or say?

A: I told him even if you will give me back the one-half and other half will be given on pay day.

Q: And what was the reply of Mr. Eugenio Tuangson?

A: He said, 'Are you crazy? I will kill you (birahan tika unya).'

Q: After that what else transpired?

A: I said, 'Bay, I will not fight with you. If you are not going to return the money, I will report you to Sir.'

Q: When you say, Sir, whom you do mean?

A: Our manager of the agency.

Q: When you said that I will report you to the manager, Bay, what did Eugenio Tuangson do?

A: He was very mad.

Q: And after that, what did you do?

A: I said, 'That is my promise, Bay, if you are not going to return the money, I will report you.'

Q: When you said for the second time that I will report you to the manager, what did Mr. Eugenio Tuangson do . . . before that . . . all the while during this conversation you remained standing and Mr. Tuangson remained sitting?

A: Yes.

Q: How far were you from each other?

A: One or two armslength away from each other.

Q: Were you holding your shotgun at that time?

A: Yes.

Q: Will you please stand up. How did you hold your shotgun?

A: I was only carrying my . . . I was holding the handle of the shotgun with my right hand.

Q: And were you facing each other?

A: Yes.

Q: When you said that for the second time, 'Bay, if that is the case, then I will really report you to our manager,' what did Eugenio Tuangson do?

A: Because he was very angry and he even told me that I was crazy. He was in the act of standing, then he was pulling his revolver because he was going to kill me.

Q: At that instance, what did you do?

A: Because I was afraid that he might shoot me, so I shot him instead.

Q: Did you hit him?

A: Yes.

Q: Could you still remember the particular part of his body did you hit him?

A: His chest, front chest.

Q: What happened to Mr. Eugenio Tuangson when he was hit?

A: He fell.

Q: After he fell down, what did you do?

A: I went out of the gate.

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Q: What was your purpose in going out of the gate?

A: To surrender. [2]

The foregoing dialogue clearly shows that the defense has failed to prove satisfactorily the justifying circumstance of self-defense. Escoto's conviction must perforce stand as he was far from acting in self-defense when he shot Tuangson. Admittedly, Escoto at that time was so provoked, apparently blinded by anger and full of vengeance. He was also armed with a powerful firearm. He was in a standing position and holding the handle of his shotgun with his right hand. Tuangson on the other hand was seated and his gun was still in the holster and attached to his waist. Escoto was a robust young man at 29 while Tuangson was already 56 years old. For self-defense to be properly appreciated, there should be a necessity in both the action taken as well as the means used, and the latter depends on whether the aggressor himself was armed, the nature and quality of the weapon used, and the physical conditions and sizes of both the aggressor and the person defending himself. [3]

The actuation of the victim prior to the actual shooting could not be equated with unlawful aggression. Escoto revealed in the cross-examination that -

Fiscal:

While you were already standing in front of him with your shotgun fully loaded and you said that he had already spent the money, at what point in time did the late Tuangson say 'birahan tika?'

Uldarico Escoto:

When I told him that I was going to report to Boy Gica.

Q: While you said these words 'birahan tika,' he was still sitting?

A: He was sitting but he was in the act of pulling his firearm (witness demonstrating by holding his right hand and as if (he is) about to stand up from his sitting position).

Q: And it was at this precise time that you also fired your gun?

A: No.

Q: When he was in the act of pulling his gun midway between sitting and standing, that was the time I fired my shotgun.

Q: In other words, the late Eugenio Tuangson was not able to completely stand up but was midway between sitting and standing when you fired your gun?

A: Yes, because if he can (sic) fully stand up, he will (sic) be first to (be) hit.

Q: In like manner, he was not also able to completely draw his gun from its holster when you fired your gun?

A: He was not able to completely get his firearm from its holster. [4]

The mere apprehension that Tuangson would shoot him could hardly be acceptable, much less justified. Unlawful aggression requires an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude. [5] Unlawful aggression must be such as to put in real peril the life of the person defending himself and not a mere imagined threat. [6]

It is imperative for Escoto to show legal justification for killing Tuangson. He must rely on the strength of his own evidence and not on the weakness of that of the prosecution. [7] Escoto's claim of self-defense is a futile attempt at exoneration.

The penalty for homicide under Art. 249 of the Revised Penal Code is reclusion temporal or from twelve (12) years and one (1) day to twenty (20) years. With the presence of two (2) mitigating circumstances as correctly

appreciated by the trial court, namely, passion and obfuscation, and voluntary surrender, which are not offset by any aggravating circumstance, the imposable penalty of reclusion temporal is reduced by one degree lower or prision mayor, or from six (6) years and one (1) day to twelve (12) years. Applying the Indeterminate Sentence Law, the maximum of the imposable penalty shall be taken from the medium period of prision mayor the range of which is eight (8) years and one (1) day to ten (10) years, while the minimum shall be taken from the penalty next lower in degree which is prision correccional the range of which is six (6) months and one (1) day to six (6) years, in any of its periods. Taking into account the circumstances under which the accused committed the crime, the court considers fair and just the imposition of an indeterminate prison term of two (2) years six (6) months and twenty (20) days of prision correccional medium, as minimum, to eight (8) years four (4) months and ten (10) days of prision mayor medium, as maximum.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals of 15 July 1994 as well as its Addendum to Decision of 10 August 1994 finding the accused ULDARICO ESCOTO guilty of homicide with the mitigating circumstances of passion and obfuscation plus voluntary surrender, and ordering the accused to pay the heirs of his victim Eugenio Tuangson P50,000.00 as indemnity for his death and P40,000.00 as actual damages is AFFIRMED. However the indeterminate prison term imposed by the court a quo is MODIFIED to two (2) years six (6) months and twenty (20) days of prision correccional medium, as minimum, to eight (8) years four (4) months and ten (10) days of prision mayor medium, as maximum. No costs.
SO ORDERED.

Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Decision penned by Judge Portia Aliño-Hormachuelos, RTC-Br. 12, Cebu, p. 5; Original Records, p. 101.

[2] TSN, 13 March 1991, pp. 11-15.

[3] *People v. Nuestro*, G.R. No. 111288, 18 January 1995, 240 SCRA 230.

[4] *Id.*, 14 March 1991, pp. 11-12.

[5] *People v. Bayocot*, G.R. No. 55285, 28 June 1989, 174 SCRA 300; *People v. Manlulu*, G.R. No. 102140, 22 April 1994, 231 SCRA 708.

[6] *People v. Daquipil*, G.R. Nos. 86305-06, 20 January 1995, 240 SCRA 330 citing *People v. Bausing*, G.R. No. 64965, 18 July 1991, 199 SCRA 355.

[7] *People v. Bausing*, See Note 6; See Note 5.

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