DOROTEO TOBES @ DOTING, PETITIONER, VS. COURT OF APPEALS, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 127441. October 05, 2001

Ponente: PARDO, J.

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PARDO, J.:

Appeal via certiorari from the decision[1] of the Court of Appeals affirming with modification[2] the trial court's decision finding petitioner guilty of homicide and sentencing him to an indeterminate penalty of eight (8) years of prision mayor as minimum, to twelve (12) years, ten (10) months and twenty (20) days of reclusion temporal, as maximum, to indemnify the heirs of the victim Joel Escareal in the amount of P12,000.00, moral damages of P20,000.00, actual damages of P6,000.00 and attorney's fees of P5,000.00 and to pay the costs.

On August 27, 1990, the provincial prosecutor of Northern Samar filed with the Regional Trial Court, Northern Samar, at Catarman an information charging accused Wilfredo Pollentes @ Pido and Doroteo Tobes @ Doting with murder, as follows:

> "That on or about the 8[th] day of July, 1990, at about 8:30 o'clock in the evening, in Barangay Sta. Clara, Municipality of Bobon, Province of Northern Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, conspiring with and confederating together and mutually helping each other, with deliberate intent to kill and thru treachery and evident premeditation and taking advantage of their superior strength, did then and there, wilfully, unlawfully and feloniously attack, assault and shoot one JOEL ESCAREAL with the use of the said gun, which the accused had provided themselves for the purpose, thereby inflicting upon said Joel Escareal a gunshot wound which caused the instant death of said victim.
>
> "CONTRARY TO LAW."[3]

On September 13, 1990, the trial court arraigned both accused. They each entered a plea of "not guilty." Trial ensued.

After due trial, on June 21, 1991, the trial court rendered a decision, the dispositive portion of which reads:

> "WHEREFORE, the Court hereby declares the accused DOROTEO TOBES alias DOTING guilty of the crime of HOMICIDE beyond a reasonable doubt, as principal, and considering the presence of one mitigating circumstances without any aggravating circumstance to offset the same, hereby sentences him to suffer an indeterminate penalty ranging from EIGHT (8) YEARS OF prision mayor, as minimum, to TWELVE (12) YEARS, TEN (10) MONTHS and TWENTY (20) DAYS of reclusion temporal, as maximum, and to pay the costs. Likewise, the Court condemns the said accused to indemnify the heirs of the victim Joel Escareal in the amount of P12,000.00 to pay the widow and children of the same victim moral damages of P20,000.00, actual damages of P6,000.00 and attorneys fees of P5,000.00. However, the corresponding filing fees based on the total amount herein awarded, shall be assessed and shall constitute as first liens upon the total amount of awards herein ordered.

> "The Court hereby finds accused WILFREDO POLLENTES alias PIDO guilty beyond a reasonable doubt of the felony of SLIGHT PHYSICAL INJURIES and considering one mitigating circumstance without any aggravating circumstance, sentences him to suffer TEN (10) days of arresto menor and to pay the costs.
>
> "In the service of their sentence, the accused shall be credited with the full time of their preventive imprisonment provided they had agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners; otherwise, they shall be entitled to only four-fifths (4/5) thereof; pursuant to the provisions of Article 29 of the Revised Penal Code as amended by Republic Act 6127.
>
> "SO ORDERED."[4]

On July 05, 1991, petitioner appealed the decision to the Court of Appeals.[5]

On December 3, 1996, the Court of Appeals promulgated its decision affirming the appealed decision with modification. We quote the decretal portion:

> "WHEREFORE, premises considered, the decision appealed from is hereby AFFIRMED with a MODIFICATION that the awarded civil indemnity be increased from P12,000.00 to P50,000.00. Costs against the appellant.
>
> "SO ORDERED."[6]

Hence, this appeal.[7]

The facts, as found by the trial court and upheld on appeal by the Court of Appeals, are as follows:

> "That at about 8:00 o'clock in the evening of July 8, 1990, the victim Joel Escareal alias Willy was walking towards the door of AM Disco house situated at the corner of Escareal and Duran Sts. in Bobon, Northern Samar; he was fixing up the zipper of his trousers as he was proceeding on his way. Accuse Wilfredo Pollentes alias Pido who came out of the door of the AM Disco house met Escareal and confronted the latter why he threw bottles to the former. Pollentes was holding the shoulder of Escareal and after uttering the statement to confront, boxed the latter on his chin. Joel Escareal fell down, face up, and as he was about to rise, Wilfredo Pollentes poised to box again the said Escareal. At this juncture, Joel Escareal drew his Cal. 38 revolver from his waistline and shot Pollentes who was thereby hit on his body. The Pollentes walked to the street, while Joel Escareal just stood near the door of the AM Disco house, looking to Pollentes as the latter was moving away; Escareal's back was then towards the door of the AM Disco and he was still holding by his right hand the revolver which he used in shooting Pollentes. At this moment, accused Doroteo Tobes went out of the door of the Disco house, and as he was behind, place his arm around the neck of Escareal and hurled him (Escareal) who thereby fell on his back on the ground; the revolver of Escareal was likewise thrown to the ground near his foot when Tobes hurled him down. As Escareal lay face up, Tobes then picked the firearm and shot Escareal on his left temporal area as his head was slightly tilted to its right side. After he fired at Escareal, Tobes then fired another shot to the air.
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> "The gun of Escareal that was used by accused Tobes, was Cal. 38 revolver, with Serial No. 434872 which accused Tobes gave to policeman Eleuterio Celespara in the presence of a certain Ben Esquillo, a retired policeman.
>
> "At the place where the victim was shot by the accused Tobes, were two electric bulbs - one placed outside the AM Disco house and another at the NORSAMELCO post. When the shooting incident herein complained of took place, prosecution witnesses Cenon Cobrana and Joverto Sula were just nearby; in fact, Cobrana was about 5 ½ meters away while Sule was more or less 3 meters in distance."[8]

The issues raised are:

(1) whether or not there was unlawful aggression on the part of the victim;

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(2) whether the mitigating circumstances of incomplete defense of relative/stranger, sufficient provocation or threat on the part of the victim, passion and obfuscation and voluntary surrender may be appreciated in favor of petitioner; and

(3) whether or not the penalty and civil indemnity imposed are correct.[9]

Petitioner admitted killing the victim Jose Escareal. He, however, interposes the justifying circumstance of self-defense or defense of a stranger. The elements of self-defense are the following:

> "(a) unlawful aggression on the part of the victim;
>
> "(b) reasonable necessity of the means employed to the victim; and,
>
> "(c) lack of sufficient provocation on the part of the person defending himself, which must be proved by clear and convincing evidence."[10]

In such case, the burden of evidence shifted to the accused[11] to prove the elements of self-defense by clear and preponderant evidence, otherwise conviction would follow from his admission that he killed the victim.[12]

It is not disputed that in the evening of July 8, 1990, after the bottle-hurling incident inside the disco house, Joel Escareal went outside. It was there that accused Wilfredo Pollentes met Joel Escareal and confronted the latter about the incident inside and boxed him causing Joel Escareal to fall to the ground face up. When accused Pollentes was poised to strike Joel Escareal again, the latter drew his gun and shot accused Pollentes, who, upon being hit, retreated towards the direction of the street. Joel Escareal was by then standing with his back to the door of the disco house when petitioner came out and, from behind, placed his arm around Joel and hurled him to the ground causing him to fall on his back. The revolver he was holding was also thrown to the ground and landed near his foot. Petitioner Doroteo Tobes picked up the gun and shot Joel Escareal on the left temporal area as his head was slightly tilted to the right. Petitioner Tobes then fired a second shot into the air.

The foregoing facts show that the plea of self-defense or defense of a stranger would not lie. When petitioner attacked the victim, the aggression by the victim against accused Pollentes no longer existed. Joel Escareal was standing with his back to the door without doing anything but watching accused Pollentes walk away. A person defending a relative or stranger must find out who the aggressor was before undertaking the defense.[13] Thus, when petitioner attacked Joel Escareal, petitioner was not defending himself. In fact, it was petitioner who was the aggressor.

In the absence of unlawful aggression on the part of Joel Escareal, there can be no self-defense, complete or incomplete.[14]

Petitioner submits that the mitigating circumstances of sufficient provocation or threat on the part of the deceased or passion or obfuscation may be appreciated in his favor.

As a fact, there was no threat or provocation directed at petitioner, then he could not have been provoked into passion or obfuscation.[15]

On the other hand, the trial court appreciated the mitigating circumstance of voluntary surrender in petitioner's favor.

The increase in civil indemnity from P12,000.00 to P50,000.00 is consistent with current jurisprudence.[16]

WHEREFORE, the Court denies the petition and affirms the decision[17] sought to be reviewed, with costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, and Ynares-Santiago, JJ., concur.
Kapunan, J., on official leave.

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[1] In CA-G. R. CR No. 14006, promulgated on December 3, 1996, Vasquez, Jr., J., ponente, Purisima and Sandoval-Gutierrez, JJ., concurring. Rollo, pp. 50-60.

[2] Increasing the civil indemnity awarded to P50,000.00.

[3] Petition, Rollo, pp. 11-48, at pp. 16-17.

[4] Petition, Annex "D", Rollo, pp. 77-94, at p. 94.

[5] RTC Record, p. 112. Docketed as CA-G. R. CR No. 14006.

[6] Petition, Annex "A", Rollo, pp. 50-60.

[7] Filed on February 3, 1997. Petition, Rollo, pp. 11-46. On April 05, 2000, we gave due course to the petition, Rollo, pp. 314-315.

[8] CA Decision, Rollo, pp. 50-60, at pp. 51-52.

[9] Memorandum for the People of the Philippines (Rollo, pp. 331-341, at p. 334).

[10] People v. More, 321 SCRA 538, 543 [1999], citing People v. Navarro, 356 Phil. 450, 455 [1998].

[11] But not the burden of proof (Bautista v. Sarmiento, 138 SCRA 587, 592-593 [1985]).

[12] People v. Decenal, 235 SCRA 67, 72-73 [1994].

[13] Ramon C. Aquino, Revised Penal Code, 1988 ed., p. 192, citing United States v. Esmedia, 17 Phil. 260 [1910].

[14] People v. Real, 367 Phil. 525, 534-535 [1999].

[15] People v. Leonor, 364 Phil. 766, 784 [1999].

[16] People v. Sison, 189 SCRA 643, 648 [1990]; People v. Padrones, 189 SCRA 496; People v. Sazon, 189 SCRA 700 [1990]; People v. Jereza, 189 SCRA 690 [1990]; People v. Pabillano, G. R. No. 108618, February 6, 2001.

[17] In CA-G. R. CR No. 14006.

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