

P/INSP. ROQUE G. GALANG, petitioner, vs. COURT OF APPEALS and PEOPLE OF THE PHILIPPINES, respondents.

G.R. No. 128536. January 31, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal via certiorari from the decision of the Court of Appeals[1] finding petitioner guilty of homicide and "appreciating the privileged mitigating circumstance of incomplete justifying circumstance of performance of duty as provided under paragraph 1, Article 13 in relation to paragraph 5, Article 11 of the Revised Penal Code", sentencing him to six (6) years of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum, to indemnify the heirs of Carlos Oro in the amount of fifty thousand pesos (P50,000.00) and costs.

Police Inspector Roque G. Galang was originally charged with homicide by information filed with the Regional Trial Court, Romblon, Odiongan, Branch 82 which reads as follows:

"That on or about the 26th day of November, 1992, at around 8:30 o'clock in the evening, in the Poblacion, Municipality of Alcantara, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, did then and there wilfully, unlawfully and feloniously shot with a .45 cal. pistol, one CARLOS G. ORO, inflicting upon the latter, mortal gunshot wounds in different parts of his body which were the cause of this death."[2]

After due trial on plea of not guilty, on May 17, 1994, the trial court rendered decision finding accused Police Inspector Roque G. Galang guilty, as charged, rejecting his claim of self defense. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, this Court finds the accused, Police Inspector Roque Galang, guilty beyond reasonable doubt of the crime of Homicide, as defined and prescribed under ART. 249 of the Revised Penal Code, and, with neither aggravating nor mitigating circumstances, their attendance having been off-set by each other, and applying the Indeterminate Sentence Law, he is hereby sentenced to an imprisonment of eight (8) 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; (People vs. Raquito Y. Tolentino, G. R. No. 90766, 13 August '90); to pay the heirs of the victim, Carlo Oro, the sum of P30,000.00 as damages; plus costs."[3]

In due time, accused appealed to the Court of Appeals.[4]

On November 29, 1996, the Court of Appeals promulgated its decision affirming with modification that of the trial court, as set forth in the opening paragraph of this decision.

On March 3, 1997, the Court of Appeals denied accused-appellant's motion for reconsideration.[5]

Hence, this petition.[6]

The Court of Appeals found the following facts:

"On November 26, 1992, the town of Alcantara in Romblon was in a festive mood since the provincial meet was being held, in a cultural program hold "Sayawitan" was scheduled that night.

"That day also happened to be the birthday of Carlos Oro, and, ironically, the day of his demise. As it was his birthday, Carlos celebrated by going on a drinking spree. At around 7:00 o'clock that evening, Carlos went home, drunk. After a while, he left, never to return again. At around 8:00 o'clock, in front of the house of ex-Governor Solidum, Carlos figured in an altercation with one Jojo Marcelo. Later on, he similarly had a run-in with one Dennis Lota, who happened to pass by.

"Reports of the altercation reached appellant who, together with policeman Adreo Galin and CAFGU members, proceeded to the place. Upon seeing Carlos, appellant drew his gun and pointed it at him, and said: "Carlos, buhe-i imong baril, ako si Inspector Galang" (Carlos, drop your gun, I am Inspector Galang). Carlos raised his hands, saying: "Nong Roque, indi ako mag laban" (Nong Roque, I will not fight back). Thereafter, appellant grab the right arm of Carlos and forced him to kneel on the ground with his right hand behind his back still being held by the appellant. It was in this position when appellant pumped two (2) bullets into Carlos who slumped to the ground. Appellant ordered his men to get a tricycle to bring Carlos to the hospital. He was pronounced dead upon arrival."^[7]

At issue is whether the Court of Appeals erred in convicting the petitioner of homicide, not appreciating his claim of self-defense.

We deny the petition.

The rule is well established that factual findings of the trial court are binding on the Supreme Court when supported by substantial evidence on record and carry more weight when affirmed by the Court of Appeals.^[8]

In this petition, petitioner imputes as errors the Court of Appeals' failure to appreciate his claim of self-defense and its reliance on the testimonies of prosecution witnesses.

We agree with the Court of Appeals that petitioner failed to prove his claim of self-defense. Generally, "the burden lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt rather than upon the accused that he was in fact innocent."^[9] However, if the accused admits killing the victim, but pleads self-defense,^[10] the burden of evidence is shifted to him to prove such defense by clear, satisfactory and convincing evidence^[11] that excludes any vestige of criminal aggression on his part.^[12] To escape liability, it now becomes incumbent upon the accused to prove by clear and convincing evidence all the elements of that justifying circumstance.^[13]

To successfully claim self-defense, the accused must prove the existence of all the following concurrent elements: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel the attack; and (c) the person defending himself must not have provoked the victim into committing the act of aggression.^[14]

Petitioner claims that he fired upon Carlos Oro after the latter pointed a gun at him. The physical evidence does not support this claim. It was impossible for Carlos to be facing petitioner because the bullet's trajectory was downward.^[15] Carlos Oro was in kneeling position when petitioner mercilessly shot him from behind as he was begging for his life.^[16]

Granting for the sake of argument that unlawful aggression was attendant at the initial stage, the same ceased to exist when Carlos Oro dropped his gun and was forced down on his knees. The threat to petitioner's life was no longer attendant. He had no justification for shooting Carlos Oro. When unlawful aggression ceases, the defender no longer has the right to kill or even wound the former aggressor.^[17]

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 unlawful aggression against the person defending himself.[18] In the absence of such element, petitioner's claim of self-defense must fail.

However, the Court of Appeals erred in considering in favor of petitioner "the privileged mitigating circumstance of incomplete justifying circumstance of performance of duty as provided under paragraph 1, Article 13 in relation to paragraph 5, Article 11 of the Revised Penal Code." This circumstance can not be considered in view of the court's own finding that the victim was disarmed and in kneeling position when petitioner mercilessly shot him from behind as he was begging for his life. "A peace officer is never justified in using necessary force in effecting arrest or in treating with wanton violence the arrested person or in resorting to dangerous means when the arrest could be effected otherwise." [19]

Petitioner was a police officer. Policemen are bound by their duty to protect life, liberty and property. As their position gives them a great deal of advantage in case they decide to turn to the other side of the law, we must be more exacting and vigilant in order to curtail the wrongful use of force for the better protection of the public.

IN VIEW WHEREOF, the petition is hereby DENIED, for lack of merit. We, however, set aside the decision of the Court of Appeals in CA-G.R. CR 16954, promulgated on November 29, 1996. Instead, the Court hereby renders judgment finding accused Police Inspector Roque G. Galang guilty beyond reasonable doubt of homicide, defined and penalized under Article 249 of the Revised Penal Code, with neither aggravating nor mitigating circumstance, their attendance having been offset by each other, and applying the Indeterminate Sentence Law, sentencing him to an indeterminate penalty of eight (8) 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, to indemnify the heirs of the deceased Carlos Oro in the amount of fifty thousand pesos (P50,000.00), and to pay the costs.

No costs in this instance.

SO ORDERED.

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

[1] In CA-G. R. CR No. 16954, promulgated on November 29, 1996, Justice Oswaldo D. Agcaoili, ponente, Justices Jorge S. Imperial and Buenaventura J. Guerrero, concurring, Rollo, pp. 20-39.

[2] Petition, Rollo, pp. 8-24, at p. 9.

[3] Rollo, pp. 28-39.

[4] Docketed as CA-G.R. CR No. 16954.

[5] Rollo, pp. 41-42.

[6] Filed on April 17, 1997, Rollo, pp. 8-26.

[7] Court of Appeals Decision promulgated on November 29, 1996, Rollo, pp. 28-39, at p. 29.

[8] Valgozon's Realty, Inc. vs. Court of Appeals, 295 SCRA 449 (1998); Polotan, Sr. vs. Court of Appeals, 296 SCRA 247 (1998); Gonzales vs. Court of Appeals, 298 SCRA 322 (1998); Halili vs. Court of Appeals, 287 SCRA 465 (1998); Lagandaon vs. Court of Appeals, 290 SCRA 330 (1998); Salao vs. Court of Appeals, 284 SCRA 493 (1998)

[9] People vs. Lati, 184 SCRA 336, 345 (1990)

- [10] People vs. Magaro, 291 SCRA 681 (1998); People vs. Cawaling, 293 SCRA 267 (1998)
- [11] People vs. Macariola, 120 SCRA 92 (1983); People vs. Atienza, 116 SCRA 379 (1982); People vs. Valencia, 133 SCRA 82 (1984)
- [12] People vs. Sarence, 214 SCRA 780 (1992)
- [13] People vs. Aguilar, 292 SCRA 349 (1998); People vs. Noay, 296 SCRA 292 (1998)
- [14] People vs. Aguilar, supra; People vs. Villamor, 292 SCRA 384 (1998)
- [15] Findings of Dr. Maximo Reyes (NBI medico legal officer)
- [16] Ibid.
- [17] People vs. Cawaling, supra; People vs. Bitoon, G.R. No. 112451, June 28, 1999, citing People vs. Alconga, 78 Phil 366 (1947)
- [18] People vs. Cario, 288 SCRA 404 (1998)
- [19] Chief Justice Ramon C. Aquino, The Revised Penal Code, 1987 edition, Vol. One, p. 205.

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