PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TEODORICO UBALDO, ACCUSED-APPELLANT.

G.R. No. 129389. October 17, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal by certiorari is the decision of the Court of Appeals dated September 30, 1996, in CA-G.R. CR No. 12577, the dispositive portion of which reads:

> WHEREFORE, the appealed decision is AFFIRMED finding appellant TEODORICO UBALDO, guilty as principal in homicide, with the modification that he is credited with one mitigating circumstance of sufficient provocation by the offended party and sentenced to an indeterminate penalty of EIGHT (8) YEARS of prision mayor, as minimum to FOURTEEN (14) YEARS AND EIGHT (8) MONTHS of reclusion temporal as maximum. All other parts of the appealed decision are maintained.
>
> SO ORDERED.[1]

The factual background of this case, as gleaned from the records, is as follows:

The early morning of August 27, 1988 saw the household of Reynaldo Ventura, a barangay kagawad of Barangay San Juan, San Manuel, Pangasinan, hectic with preparations for the wedding of his son Rolly Ventura to Lilibeth Galamgam, a niece of the Cabot family. The latter's residence was located one house away from the Venturas.

At around 8:00 A.M. of that day, an inebriated Norberto Cabot, uncle of the bride, strolled into the back of the Ventura residence where the food was being prepared, and started berating the cooks for not bringing out all the food. The cooks managed to pacify Norberto with a promise to bring the food out, as soon it was ready. Norberto then returned to his family residence.

An hour later, Norberto returned to the house of the Venturas and again started shouting at the cooks and their helpers. Reynaldo, who was assisting in the kitchen, approached Norberto and convinced him to go home. Norberto acceded to his request.

When Norberto returned a third time, however, and started becoming violent, disrupting the wedding festivities, Reynaldo was advised to call the barangay captain. Reynaldo proceeded to the house of barangay captain Teodorico Ubaldo, appellant herein and second cousin of Norberto. Reynaldo persuaded Teodorico to come along and pacify Norberto.

When they reached the Ventura residence, they heard the angry shouts and curses of Norberto coming from the kitchen. Reynaldo was informed that his wife collapsed due to fear and a heart ailment. Reynaldo rushed to attend to his wife and told appellant to see Norberto in the kitchen.

Appellant proceeded alone to the kitchen and approached the irate Norberto from behind. He pulled out his gun and fired at Norberto, hitting him in the nape. Two shots followed in rapid succession and Norberto fell face

downward. Upon hearing the gunshots, two sisters of the victim, Basilia Cabot and Pacita Cabot-Dispo, who were next door, rushed to the scene and upon seeing the fallen Norberto, shouted for help. Appellant then fled.

A police officer, who was nearby reported the incident to the police station. Minutes later, two policemen arrived to investigate the shooting. They were told that appellant had shot the victim. The law enforcers proceeded to appellant's house, but did not find him there. A further search revealed that appellant was nowhere to be found in Barangay San Juan, San Manuel, Pangasinan.

An autopsy conducted on the victim by Dr. Asuncion Tuvera, Municipal Health Officer of San Manuel, Pangasinan, revealed that the cause of death was "Cardio-respiratory arrest secondary to multiple gunshot wound(s) at neck and chest."[2] The autopsy report showed that the victim had suffered three gunshot wounds in the neck and chest.[3]

On November 11, 1988, appellant was charged before the Regional Trial Court of Urdaneta, Pangasinan, with illegal possession of firearm and ammunition (Criminal Case No. U-5002), and murder (Criminal Case No. U-5003). The information for Criminal Case No. U-5002 alleged:

> That on or about the 27[th] day of August 1988, in the morning, at Barangay San Juan, municipality of San Manuel, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously have in his possession, custody and control one (1) short firearm, a homemade revolver (Paltik) and one (1) ammunition, without having first secured the necessary permit or license therefor.
>
> Said firearm was used in the shooting of one, Norberto Cabot which resulted to (sic) his death.
>
> CONTRARY to Presidential Decree No. 1866.[4]

In Criminal Case No. U-5003, the information charged:

> That on or about the 27[th] day of August 1988, in the morning, at barangay San Juan, municipality of San Manuel, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a short firearm, a homemade revolver (Paltik), with deliberate intent to kill and with treachery and evident premeditation, did then and there, wilfully, unlawfully and feloniously attack, assault and shoot one, Norberto Cabot, inflicting upon him the following injuries:
>
> External Findings:
>
> Head and neck - gunshot wound about 0.5 cm. with burn areas around it at the lateral side of the neck.
>
> Chest - gunshot wound about 0.5 cm. at the right anterior axillary line at the level of the 3[rd] anterior rib.
>
> - gunshot wound at the right anterior axillary line at the level of the 10[th] anterior rib (point of entry)
> Back - gunshot wound at the right infra scapular area about 1 cm. (point of exit)
>
> Internal Findings:
>
> Neck - lacerated pharynx
> Chest - lacerated anterior lobe of liver,
>
> which caused the death of said Norberto Cabot, as a consequence, to the damage and prejudice of his heirs.
>
> CONTRARY to Art. 248, Revised Penal Code.[5]

Several warrants of arrest were issued against appellant but they remained unserved until his arrest in February 1989.

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During his arraignment on June 5, 1989 and August 28, 1989, appellant entered separate pleas of "Not Guilty" for Criminal Cases Nos. U-5003 and U-5002. Since the two cases arose out of the same incident, both were tried before Branch 49 of the RTC of Urdaneta, Pangasinan.

The prosecution's evidence centered on the testimony of Basilia Cabot, a sister of the victim, who testified that she saw appellant shoot her brother thrice, from behind, and at close range, causing him to drop dead on the spot.[6] In addition, the prosecution presented the investigating police officers, Diosdado Gordovez and Mario Tajon, who stated that per their investigation, it was appellant who shot the victim, and that appellant was nowhere to be found when they tried to track him down.[7] Finally, the prosecution also presented Dr. Asuncion C. Tuvera, who confirmed her autopsy findings and testified that the victim was shot at close range.[8]

On the witness stand, appellant claimed self-defense. According to him, Norberto Cabot, the victim, pulled a gun from his waist when appellant accosted him. Norberto fired a shot at him, but missed as he was able to duck. He then grappled with Norberto for possession of the gun and while they were struggling, the gun went off three times, hitting Norberto each time.[9] According to appellant, it was impossible for Basilia Cabot to have witnessed the incident, since she was not at the place where the shooting took place.[10] On cross-examination, he clarified that when they were struggling for possession of the firearm, he managed to hold the gun so it pointed towards the deceased and that it was the victim who squeezed the trigger three times.[11]

Supporting appellant's version of the incident was defense witness Anastacia Tapat, an aunt of Reynaldo Ventura, who claimed she saw the shooting. Anastacia testified that it was she who asked Reynaldo to call the barangay captain when Norberto started becoming violent;[12] that she saw him pull out a gun and point it at appellant when the latter accosted him;[13] that appellant and Norberto then grappled for possession of the gun until it went off three times; and that Norberto tumbled down after she heard the gunshots.[14]

The trial court gave credence to the version of the prosecution. On March 21, 1991, it rendered its decision disposing as follows:

> WHEREFORE, this Court convicts the said accused of Homicide penalized by Art. 249 of the Revised Penal Code and sentences him to a penalty of Reclusion Temporal. By virtue of the provisions of the Indeterminate Sentence Law, the accused is sentenced to suffer the penalty of 10 years of Prision Mayor as minimum to 17 years and four months of Reclusion Temporal as maximum and to indemnify the heirs of the victim in the amount of P50,000.00 by virtue of the resolution of the Supreme Court dated April 30, 1990 without subsidiary imprisonment and with costs.
>
> With respect to the illegal possession of firearms, in Crim. Case No. 5002, there was no proof offered by the prosecution that the gun is not licensed. No witness was introduced so far to prove that it is not one of those guns listed as licensed. No proof was offered to show that the accused did not have the license to hold/possess the gun. Those proofs were wanting. Although there was a gun used in killing the victim, there was no proof offered to show that the said gun was unlicensed. Furthermore, it was alleged in the information that the accused allegedly had in his possession, control and custody one short firearm a home made revolver (paltik) and one ammunition. What was recovered from the body of the victim was .38 caliber slug, not a slug from a paltik revolver. It was not proved that the accused was not authorized to carry the said gun.
>
> WHEREFORE, the case of illegal possession of firearm and ammunition is hereby dismissed for insufficiency of evidence with costs de oficio (sic).
>
> SO ORDERED.[15]

Appellant seasonably appealed his conviction to the Court of Appeals, contending that the trial court erred in not appreciating his having acted in self-defense. The appellate court affirmed his conviction, but allowed him the

mitigating circumstance of sufficient provocation on the part of the offended party specially as appellant was then discharging his duty as a person in authority.

Hence, the petition before us. Appellant avers that the appellate court committed the following errors:

- IN HOLDING THAT THE DEFENDANT-APPELLANT DID NOT ACT IN SELF-DEFENSE AND, THUS, IS ACCOUNTABLE FOR THE DEATH OF THE VICTIM.

- IN HOLDING THAT DEFENDANT-APPELLANT IS GUILTY OF HOMICIDE.

- IN NOT ACQUITTING DEFENDANT-APPELLANT ON THE GROUND OF REASONABLE DOUBT.[16]

The grounds relied upon by appellant may be reduced to one pivotal issue: Did appellant act in self-defense?

Generally, the burden of proof is upon the prosecution to prove the guilt of the accused beyond reasonable doubt. Having invoked self-defense as a justifying circumstance, however, appellant is deemed to have admitted having killed the victim, and the burden of proof is shifted upon him to establish and prove his claim.[17] To escape liability, he must show the concurrent presence of all the elements of self-defense, namely: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[18]

In his memorandum, appellant contends that the testimonies of defense witnesses Reynaldo Ventura, Anastacia Tapat, and appellant himself have clearly established all of the foregoing elements of self-defense. Appellant submits that these testimonies have satisfactorily shown that the sudden pointing and firing by Norberto of a gun at appellant was an imminent and actual danger to the latter. To protect himself, appellant had to wrestle for possession of the firearm, and in doing so, the gun went off and hit the victim, causing his death.

However, we have on record the testimony of prosecution witness Basilia Cabot which negates appellant's claim that there was unlawful aggression on the part of the victim. Basilia testified as follows:

> PROSECUTOR VENIEGAS
>
> Q:
>
> What was that unusual incident that you saw?
>
> WITNESS
>
> A:
>
> I saw Barangay Captain Teodorico Ubaldo went (sic) near my brother.
>
> Q:
>
> When Barangay Captain Teodorico Ubaldo went near your brother what did he do with your brother if any?
>
> A:
>
> He shot my brother at the back.
>
> x x x
>
> Q:
>
> What did Barangay Captain Ubaldo used (sic) in shooting your brother?

A:

I do not know the pistol he used.

Q:

How far was the accused Barangay Captain Teodorico Ubaldo away from your brother when he shot your brother?

A:

Three (3) inches away.

Q:

Will you indicate to the Honorable Court three inches away?

A:

Like this, sir.

COURT

Witness demonstrating the distance from the brother which parties agreed.

PROSECUTOR VENIEGAS

x x x

Q:

The pistol is about one foot, what portion of the body of your brother was shot?

A:

At the back.

Q:

Will you indicate?

A:

At the lower nape.[19]

The defense assails the testimony of Basilia Cabot as unworthy of belief. Appellant stresses that Basilia was not listed as a prosecution witness; was not investigated by the police concerning the fatal shooting of her brother; and, considering that she claimed to be an eyewitness, never revealed what she knew of the shooting until October 10, 1990, or more than two years later. Appellant contends that all of the foregoing clearly show that Basilia's testimony was of doubtful veracity.

When the credibility of a witness is at issue, the trial court's evaluation of the testimony of a witness is accorded great respect by the appellate courts, because of its direct opportunity to observe the witness on the stand and to determine whether he or she is telling the truth or not.[20] And where such assessment is affirmed by the Court of Appeals, the Supreme Court ought not to interfere with the trial court's findings on the credibility of a witness.[21]

Moreover, a witness' delay in reporting what she knew about a crime does not render her testimony false or

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incredible, for the delay may be explained by the natural reticence of most people to get involved in a criminal case.[22] In this case, Basilia had adequately explained her reason for not immediately revealing what she knew about the incident. According to her, she was advised by the police to divulge what she knew only in court.[23] No improper motive on the part of Basilia to falsely testify against him was shown by appellant. Though Basilia is the victim's sister, it was not proved she was biased. It is settled that the relationship of a witness to the victim does not of itself impair the credibility of the witness.[24]

Basilia's testimony on the lack of unlawful aggression on the part of the victim is corroborated by the findings of the medico-legal expert who testified that the victim was first shot at the lateral side of the neck about two feet from his assailant.[25] We find the location of the first gunshot wound significant since it establishes the relative positions of appellant and victim. The autopsy findings show that appellant was not in front of the victim when the first shot was fired, but was behind him and towards the latter's side. These belie appellant's claim that he was face to face with the victim and grappling for possession of the gun when the victim was hit. The physical evidence in this case is a mute but eloquent manifestation of truth, which ranks high in the hierarchy of trustworthy evidence.[26]

On the question of whether the means employed by appellant were reasonable, the number of gunshot wounds inflicted on the deceased shows that the means employed were hardly reasonable at all. Assuming arguendo that the victim fired first at appellant, a single shot could have already disabled the former who was inebriated. The nature and number of wounds inflicted upon the victim are important indicia which disprove a plea of self-defense.[27] The gruesome, multiple gunshot wounds inflicted upon the deceased show that appellant's act was not one of self-defense, but was a determined and purposeful attack upon the victim.[28]

Regarding the third element of self-defense, the Court of Appeals stated that:

> [W]e are inclined to accord to appellant the mitigating circumstance that sufficient provocation or threat on the part of the offended party immediately preceded the act. We partly give credence to the testimony of Reynaldo Ventura, father of the bridegroom in whose wedding party the incident happened, that it was precipitated by the unruly, wild behavior of the victim who was drunk, shouting for food and armed with a bolo. This prompted them to call for the appellant Barangay Chairman who responded. Ventura's aunt, Anastacia Tapat, also partly declared that appellant tried to pacify the victim who, instead, engaged appellant in the controversial firing of a gun. It has been declared that although the offender cannot successfully claim self-defense when the aggression is in retaliation for an injury or threat, he can be given the benefit of the mitigating circumstance under paragraph 4 of article 13. This is especially applicable because appellant was then discharging his duty as a person in authority, although he exceeded it or his claim of self-defense did not sound convincing.[29]

On this score, we are in agreement with the appellate court. On record, particularly the transcripts of the stenographic notes, it appears that appellant did not provoke the victim.

After the incident, appellant immediately went into hiding. Considering that appellant was a barangay chairman and the victim was his second cousin, it was highly unbecoming for a person in authority to flee the scene of the shooting and not attend to the victim or explain his side to the police, if it were true that appellant never intended to kill the victim. It is axiomatic that flight negates self-defense and indicates guilt.[30] This circumstance militates likewise against appellant's plea of self-defense. Considering current jurisprudence, the award of P50,000 as civil indemnity to the victim's heirs is in order, but considering the number of gunshot wounds and injuries of the victim and other circumstances like the use of paltik to commit the crime, another sum of P50,000 must be awarded as moral damages and P10,000 as exemplary damages.

> WHEREFORE, the assailed decision of the Court of Appeals in CA-G.R. CR No. 12577, sustaining the

judgment of the Regional Trial Court of Urdaneta, Pangasinan, Branch 49, in Criminal Case No. U-5003, that appellant Teodorico Ubaldo is guilty of the crime of Homicide, but reducing the sentence imposed on him to only an indeterminate penalty of eight (8) years of prision mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum, is AFFIRMED. He is also ordered to pay to the heirs of the victim P50,000 as civil indemnity, P50,000 as moral damages, and P10,000 as exemplary damages.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] Rollo, pp. 61-62.

[2] Records, p. 5.

[3] Ibid.

[4] Id. at 124.

[5] Id. at 1.

[6] TSN, October 10, 1990, pp. 5-6.

[7] TSN, October 2, 1990, pp. 5, 10.

[8] TSN, October 8, 1990, p. 4.

[9] TSN, January 2, 1991, p. 4.

[10] Ibid.

[11] Id. at 6-7.

[12] TSN, December 20, 1990, p. 9.

[13] Id. at 10-11.

[14] Id. at 11.

[15] Records, pp. 129-130.

[16] Rollo, p. 17.

[17] People v. Benito Mier y Vistal, G.R. No. 130598, 324 SCRA 628, 640 (2000).

[18] P/Insp. Roque G. Galang v. Court of Appeals and People, G.R. No. 128536, 324 SCRA 139, 144 (2000) citing People v. Aguilar, G.R. Nos. 120622-23, 292 SCRA 349, 356 (1998); People v. Villamor, G.R. No. 124981, 292 SCRA 384, 395 (1998).

[19] TSN, October 10, 1990, p. 5.

[20] People v. Ildefonso Virtucio, Jr., G.R. No. 130667, February 22, 2000, p. 5.

[21] People v. Sabalones, G.R. No. 123485, 294 SCRA 751, 781 (1998).

[22] People v. Navarro, G.R. No. 129566, 297 SCRA 331, 350 (1998).

[23] TSN, October 15, 1990, p. 6.

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[24] People v. Tumaob, Jr., G.R. No. 125690, 291 SCRA 133, 139 (1998).

[25] TSN, October 8, 1990, p. 5.

[26] People v. Nepomuceno, Jr., G.R. No. 127818, 298 SCRA 450, 463 (1998) citing People v. Uycoque, G.R. No. 107495, 246 SCRA 769, 779 (1995).

[27] People v. Cañete, G.R. No. 120495, 287 SCRA 490, 498 (1998) citing Guevarra v. Court of Appeals, G.R. No. 41061, 187 SCRA 484, 490 (1987).

[28] People v. Sambulan, G.R. No. 112972, 289 SCRA 500, 513 (1998) citing People v. Macagaling, G.R. Nos. 109131-33, 237 SCRA 299 (1994).

[29] Rollo, pp. 60-61.

[30] People v. Benito Mier y Vistal, supra, at 13 citing People v. Gregorio, 255 SCRA 380, 388 (1996).

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