

NERIO SALCEDO Y MEDEL, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 137143. December 08, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Only questions of law, not of fact, may be raised in a petition for review under Rule 45 of the Rules of Court. Further, findings of facts by a trial court, when affirmed by the Court of Appeals, are binding on the Supreme Court. Any exception to these principles must be clearly and convincingly proven, a burden that herein petitioner failed to discharge.

The Case

Before us is a Petition for Review on Certiorari assailing the July 13, 1998 Decision[1] of the Court of Appeals[2] in CA-GR CR No. 19559. The CA affirmed the judgment[3] of the Regional Trial Court (RTC) of Iloilo City (Branch 38), convicting petitioner of homicide. Also challenged is the December 22, 1998 CA Resolution[4] denying reconsideration.

In an Information dated September 9, 1992, Second Assistant Provincial Prosecutor Portia T. Cabalum charged petitioner with murder allegedly committed as follows:

"That on or about May 30, 1992, in the Municipality of Balasan, Province of Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused, armed with firearms, with deliberate intent and decided purpose to kill, by means of treachery and with evident premeditation, did then and there wilfully, unlawfully and feloniously shoot one PO1 Nilo Demapaylo with the firearms which the accused was then provided, inflicting gunshot wounds on the victim's body which caused his instantaneous death." [5]

When arraigned on October 22, 1992, petitioner, assisted by Atty. Manuel Calumpang, pleaded not guilty.[6] After trial in due course, the RTC rendered its Decision, the dispositive portion of which reads:

"WHEREFORE, judgment is render[ed] finding the accused, Nerio Salcedo y Medel alias 'Sandy' guilty beyond reasonable doubt [of] the crime of [h]omicide under Article 249 of the Revised Penal Code and accordingly sentenc[ing] him to an indeterminate penalty of imprisonment ranging from eight (8) years and one (1) day of [p]rison [m]ayor, as minimum, to fourteen (14) years and eight (8) months of [r]eclusion [t]emporal as maximum, to pay the heirs of the late PO1 Nilo Depamaylo the sum of P27,037.34 as actual damages and to further indemnify said heirs the sum of P50,000 as civil indemnity on account of his death, pursuant to current jurisprudence.

"x x x x x x x x" [7]

Petitioner then appealed to the Court of Appeals, which disposed as follows:

"WHEREFORE, premises considered, the appealed decision of the lower court in Criminal Case No. 38685 is hereby AFFIRMED by this Court." [8]

Hence, this recourse.[9]

The Facts

The appellate court narrated the factual antecedents of this case as follows:[10]

"At the hearing, it appeared that none of the witnesses for the prosecution, including the victim's companions at that time of the unfortunate incident, saw the actual shooting which led to the untimely demise of said victim. Nevertheless, a crucial evidence of the prosecution is the findings of Dr. Ricardo Jaboneta, Medico-Legal Officer of the National Bureau of Investigation, Region 6, Iloilo City, who conducted on June 4, 1992 a postmortem investigation on the cadaver of the victim. In his Autopsy Report No. 92-MO-24 (pp. 290-291, Orig. Rec.), Dr. Ricardo Jaboneta declared that the cause of the victim's death was due to "Hemorrhage, profuse secondary to multiple gunshot wounds," finding five (5) shotgun wounds on the body of the victim; three (3) of which [were] found on the front left side of the abdomen, one (1) on the front right side ear lobe with powder burns on the right side [of the] cheek, and one (1) fatal wound on the back, left side of the victim.

"Accused, upon the other hand, while he admits to have shot the victim during the unfortunate incident, invoked self-defense to justify his act. He narrated his version of the incident in the following manner; that at around 7:00 p.m. on May 30, 1992, while he was about to go outside of the cockpit after deciding to go home, he was informed by one Danilo Domingues that some of the men of his brother Noel would like to go with him; that thereafter, after he was handed his shotgun, he proceeded to the cockhouse of his brother Noel, but while he was nearing said cockhouse, he heard someone who shouted 'Hoy, nga-a may armas ca?' (Hey, why are you carrying a firearm?); that he answered 'Te, may lisensiya ini' (This is licensed) to the person who shouted who turned out to be the victim PO1 Nilo Depamaylo; that upon recognizing who he was, the victim shouted 'linti' (lighting) and, at the same time, drew his firearm; that as it took sometime for the victim to draw his firearm from its holster, he (accused) also cocked his .12 gauge shotgun after having sensed that danger was forthcoming; that at that time, he was situated on the higher plain than the victim, and both of them were facing each other at a distance of six (6) to eight (8) feet away; that when the victim pointed and fired his firearm, he (accused) almost simultaneously fired also his weapon; that as the victim continued to advance towards him (accused), he (accused) fired that second shot; that as he hid in [the] gaffers[area], he heard two (2) shots coming from the victim, and forthwith, in a crouching position, he approached slowly the victim, and saw that the latter was already lying face up; that thereupon he took the firearm of the victim; that when he heard gunshots coming from the cockpit, he immediately withdrew from the scene of the crime and proceeded to the house of his mother-in-law where he later surrendered to the Chief of Police of Balasan, Iloilo."

Ruling of the Appellate Court

Affirming the trial court, the CA held that petitioner's theory of self-defense "appears not only to be highly doubtful and unbelievable, but also belied by the physical evidence in this case."

It observed that the number of wounds sustained by the deceased disproved self-defense. Considering that the victim had sustained five gunshot wounds, it disbelieved petitioner's allegation that he had fired only twice. It further held that the wound at the back of the deceased belied petitioner's claim that the two protagonists were facing each other during the incident.

It also ruled that the presence of powder burns on the victim refuted petitioner's claim that they were six to eight feet apart from each other at the time. It noted that, in any case, it was "inconceivable" that petitioner had actually emerged unscathed from the incident.

Issues

In his Memorandum, petitioner presents the following issues for our consideration:[11]

"I. Whether or not the petitioner properly resorted to Rule 45 of the 1997 Rules of Procedure to question the 13 July 1998 Decision of the Honorable Court of Appeals and the 22 December 1998 denial of the Motion for Reconsideration [of] the 13 July 1998 Decision[.]

"II. Whether or not the analysis and legal conclusions of the lower court, as affirmed by the Court of Appeals, as to the nature, location, and number of gunshot wounds are correct to warrant the rejection of petitioner's theory of self-defense[.]

- and -

"III. Whether or not the rejection of petitioner's plea of self-defense by the lower court, as affirmed by the Court of Appeals, [has] been based on groundless speculations, inferences, and conjectures[.]"

In the main, the Court will determine whether the CA erred in rejecting petitioner's plea of self-defense.

The Court's Ruling

The Petition has no merit.

Main Issue: Self-Defense

As a rule, only questions of law may be raised in a petition for review under Rule 45 of the Rules of Court.[12] However, in *Fuentes v. Court of Appeals* and several other cases, the Court laid down several exceptions as follows:[13]

- "(1) When the factual findings of the Court of Appeals and the trial court are contradictory;
- (2) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures;
- (3) When the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd or impossible;
- (4) When there is grave abuse of discretion in the appreciation of facts;
- (5) When the appellate court, in making its findings, went beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;
- (6) When the judgment of the Court of Appeals is premised on misapprehension of facts;
- (7) When the Court of Appeals failed to notice certain relevant facts which, if properly considered, would justify a different conclusion;
- (8) When the findings of fact are themselves conflicting;
- (9) When the findings of fact are conclusions without citation of the specific evidence on which they are based; and
- (10) When the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record."

On the basis of these exceptions, petitioner argues that the findings of the trial and the appellate courts were "grounded entirely on speculations, surmises and conjectures," and that their inferences were "absurd and impossible." [14] He further maintains that the two courts misapprehended the facts in rejecting his claim of self-defense. As will be shown below, however, he has not substantiated his claims of exception to the general rule.

CA Decision Not Based on

Conjectures or Surmises

Specifically, petitioner assails the CA finding that, based on the number and the location of the wounds, the victim must have been shot three or more times with a shotgun. He contends that this finding was based on conjectures and surmises, because it was "not in accord with the obvious effect of the Squibman riot shotgun fired five separate times [at] the victim." Rather, he maintains that "gunshot wounds nos. 1 - 4 clearly showed that they all came from one gunshot coming from a shotgun fired at a distance." [15] He insists that no damage to a single organ resulted from the four wounds, which would have been the necessary consequence of four separate shots from the subject weapon. Moreover, he adds that "wound no. 5 was caused by a single blast of a shotgun fired at a distance." [16]

This argument is utterly bereft of merit. Unquestionably, the victim bore five gunshot wounds -- three on the front left side of the abdomen, one on the right cheek and one on the back. Considering the distance of each of the five entry wounds, it is clear that the CA did not err in finding that there were more than two shots. One shot caused the wound on the ear (gunshot wound no. 1); another, on the back (gunshot wound no. 5); and another (or even more), the three wounds on the abdomen (gunshot wound nos. 2-4). Indeed, other than his bare assertions, petitioner has not presented any cogent proof that wound no. 1 on the ear of the victim came from the same gunshot that caused wound nos. 2-4 on the abdomen.

Contrary to the misleading insinuation of petitioner, we stress that nowhere did the CA hold that he had fired five times at the victim. It merely relied on the statement of Dr. Ricardo Jaboneta that three or more shots had been fired.

In any event, petitioner focuses entirely on the CA's rejection of his claim that he fired only twice. He ignores in effect the other factual rulings that were just as fatal to his cause. Indeed, he fails to explain sufficiently the presence of powder burns on the right cheek of the victim. The former's claim that these were caused by the latter's own pistol [17] deserves scant consideration. Most telling is the failure of petitioner to explain the presence of the entry wound on the back of the victim. Although that wound rebutted his main theory of a face-to-face shootout, the former does not claim that the CA conclusion on this crucial point resulted from conjecture, absurd inference or misapprehension of facts.

Self-Defense Not Proven

Clearly, the CA did not misapprehend the facts in rejecting the claim of self-defense.

Well-entrenched is the rule that one who invokes self-defense admits authorship of the killing. Hence, the burden shifts to that person to establish with clear and convincing evidence all the following elements of the justifying circumstance: [18] (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 one resorting to self-defense. [19]

Petitioner sought to establish the victim's "three (3) continuous acts" that allegedly constituted unlawful aggression: [20]

"a. Upon recognizing the petitioner, the victim uttered in a rude manner the Visayan idiomatic expression - "AY LINTI" x x x. Said Visayan idiomatic expression connotes anger, hatred [or] exasperation, depending on the circumstances surrounding the incident;

"b. Upon uttering the Visayan idiomatic expression, "Ay Linti" is the simultaneous drawing by the victim of his service pistol from the holster; and

"c. After drawing his service pistol from the holster, [he] pointed the same to the petitioner and fired said pistol. Moreover, even when the petitioner ha[d] already fired his SQUIBMAN RIOT SHOTGUN, the victim again attempted to shoot the PETITIONER for the second time."

The evidence that petitioner presented, however, was neither clear nor convincing. His assertion that the victim fired first is doubtful by itself. It should thus be examined in the light of his testimony that both of them fired "almost simultaneously," viz:[21]

"Q. And so what happened at that time?

A. After he got the firearm from its holster, he pointed it at me at the same time firing it and so I also fired my firearm almost simultaneously and at that time I was able to kneel on my right side."

Petitioner asserts that when the victim encountered difficulty in drawing the latter's pistol from its holster, the former took the opportunity to cock his own shotgun.[22] Hence, petitioner was ready to shoot even before the victim could draw and aim his pistol. In this light, it was foolhardy and unbelievable for the victim to continue drawing his pistol at a time when his adversary was ready to fire.

Indeed, other circumstances negate petitioner's claim. It was sufficiently established that the victim was armed with an armalite rifle when he and the other policemen went to the cockpit. Petitioner avers, however, that the victim used a pistol during the incident. If the latter had really wanted to attack, he would have used the rifle and not the pistol, which he knew could not match the power of the former's shotgun. Even assuming that the armalite rifle was somewhere else in the cockpit at the time, it was unthinkable that the victim refused to get it and instead opted to shoot it out against a ready and better armed foe. In the same vein, we find it unbelievable that petitioner, a civilian, would brandish a shotgun in a public place, if he had no reason to do so.

Petitioner's allegation that he shot the victim in a frontal encounter at a distance of six to eight feet is further belied by the presence of wound no. 5. As noted earlier, this wound, which was located at the back of the victim, was considered the most fatal. That the entry wound damaged the heart and the kidney and that there were four exit wounds show that the gun was fired at a range nearer than six to eight feet. More important, the entry wound was sustained while the back of the victim was turned towards petitioner.

Most significant, petitioner himself was unscathed. We find this implausible in view of his claim that the victim fired first at a very short range of six to eight feet.

All in all, petitioner has failed to prove unlawful aggression on the part of the victim. Without this essential element, self-defense cannot be appreciated. Indeed, all these circumstances cast doubt on the former's tale. They show that unlawful aggression came from him, not from the latter. Petitioner himself initiated the attack.

WHEREFORE, the Petition is hereby DENIED and the assailed Decision AFFIRMED. Costs against petitioner.

SO ORDERED.

Melo, (Chairman), Vitug, and Gonzaga-Reyes, JJ., concur.

[1]Rollo, pp. 37-44.

[2]Written by Justice Rodrigo V. Cosico with the concurrence of Justices Jainal D. Rasul (Division chairman) and Delilah Vidallon-Magtolis (member).

[3]Written by Judge David A. Alfeche Jr.; CA Rollo, pp. 22-39.

[4]Rollo, p. 45.

[5]Information, p. 1; CA Rollo, p. 18.

[6]Certificate of Arraignment; CA Rollo, p. 17.

[7]RTC Decision, p. 17; CA Rollo, p. 38.

[8]CA Decision, p. 7; Rollo, p. 43.

[9]The case was deemed submitted for resolution on January 25, 2000, upon receipt by this Court of petitioner's Memorandum signed by Atty. Leon G. Moya Jr. Filed earlier on January 18, 2000 was respondent's Memorandum signed by Sol. Gen. Ricardo P. Galvez, Asst. Sol. General Amparo M. Cabotaje-Tang and Asso. Sol. Ma. Lilia O. de la Rea.

[10]CA Decision, pp. 3-5; Rollo, pp. 39-41.

[11]Memorandum for Petitioner, p. 5; Rollo, p. 112. Upper case used in the original.

[12]"Sec. 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth."

[13]Fuentes v. Court of Appeals, 268 SCRA 703, February 26, 1997, per Panganiban, J. See also Castillo v. Court of Appeals, 260 SCRA 374, August 7, 1996; Solid Homes, Inc. v. Court of Appeals, 275 SCRA 267, 279, July 8, 1997.

[14]Petitioner's Memorandum, p. 6; Rollo, p. 113.

[15]Petitioner's Memorandum, p. 9; Rollo, p. 116.

[16]Ibid., p. 10; Rollo, p. 117.

[17]Ibid., p. 13; Rollo, p. 120.

[18]People v. Albao, 287 SCRA 129, 143, March 6, 1998; People v. De la Cruz, 291 SCRA 164, 180, June 26, 1998; People v. Borreros, GR No. 125185, May 5, 1999; People v. Dorado, GR No. 12224811, February 11, 1999; People v. Vermudez, GR No. 119464, January 28, 1999; People v. Umadhay, GR No. 119544, August 8, 1998.

[19]Art. 11 (1), Revised Penal Code.

[20]Petitioner's Memorandum, pp. 15-16; Rollo, pp. 122-123.

[21]Ibid., p. 17; Rollo, p. 124.

[22]Petitioner testified that "[i]t took [the victim] awhile to take out the firearm from his holster and so I also cocked my firearm."

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