

JOSUE R. LADIANA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 144293. December 04, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The Constitution bars the admission in evidence of any statement extracted by the police from the accused without the assistance of competent and independent counsel during a custodial investigation. However, a counter-affidavit voluntarily presented by the accused during the preliminary investigation, even if made without the assistance of counsel, may be used as evidence against the affiant.

The Case

Before us is a Petition for Review under Rule 45 of the Rules of Court, assailing the April 10, 2000 Decision[1] and August 4, 2000 Resolution[2] of the Sandiganbayan (First Division) in Criminal Case No. 16988. The dispositive portion of the assailed Decision reads as follows:

“WHEREFORE, judgment is hereby rendered finding accused JOSUE R. LADIANA GUILTY beyond reasonable doubt of the crime of homicide and, in the absence of any modifying circumstance, sentencing the said accused to: (a) suffer an indeterminate sentence of imprisonment of ten (10) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum[;] (b) suffer all the appropriate accessory penalties consequent thereto; (c) indemnify the heirs of the victim, Francisco San Juan, in the total amount of Fifty Six Thousand Five Hundred Pesos (P56,500.00); and (d) pay the costs.”[3]

The assailed Resolution denied petitioner’s Motion for Reconsideration.

Petitioner was originally charged with murder before the Sandiganbayan in an Information[4] dated August 5, 1991. However, the anti-graft court issued an Order[5] dated October 14, 1991, noting that “besides the allegation that the crime was allegedly committed by the accused while he was ‘taking advantage of his official position,’ nothing else is in the Information to indicate this fact so that, as the Information stands, nothing except a conclusion of fact exists to vest jurisdiction [in] this Court over the accused and over the crime for which he is charged.”

Further, the Order gave the government sufficient time to amend the Information to show adequate facts to vest the Sandiganbayan with jurisdiction over the case. Subsequently, an Amended Information,[6] still charging petitioner with murder, was filed on April 1, 1992. The accusatory portion reads as follows:

“That on or about the 29th day of December 1989, in the Municipality of Lumban, Laguna, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then a member of the Integrated National Police (INP now PNP) assigned at the Lumban Police Station, Lumban, Laguna, acting in relation to his duty which is primarily to enforce peace and order within his jurisdiction, taking advantage of his official position confronted Francisco San Juan why the latter was removing the steel pipes which were previously placed to serve as barricade to prevent the entry of vehicles along P. Jacinto

Street, Barangay Salac, Lumban, Laguna, purposely to insure the safety of persons passing along the said street and when Francisco San Juan told the accused that the latter has no business in stopping him, said accused who was armed with a firearm, with intent to kill and with treachery, did then and there willfully, unlawfully and feloniously attack and sho[o]t Francisco San Juan with the firearm hitting Francisco San Juan at his head and neck inflicting upon him fatal wounds thereby causing the death of Francisco San Juan.”[7]

During his arraignment on May 8, 1992, petitioner, assisted by his counsel de parte,[8] pled not guilty.[9] After due trial, the Sandiganbayan found him guilty of homicide, not murder.

The Facts

In their Memoranda, both the prosecution and the defense substantially relied upon the Sandiganbayan’s narration of the facts as follows:

“The prosecution presented five (5) witnesses, namely: Caridad M. San Juan, PO2 Leopoldo Cacalda, Dr. Rogelio M. Javan, SPO2 Percival A. Gabinete, and Maria T. Cortez. Their respective testimonies, in essence are as follows, to wit:

“1. CARIDAD MARGALLO SAN JUAN (hereinafter, ‘Caridad’) declared that she is the wife of Francisco San Juan (hereinafter ‘Francisco’), the victim in the case at bar. Caridad testified that Francisco was the Barangay Captain of Barangay Salac, Lumban, Laguna, until he was shot and killed by accused Ladiana, who happens to be also a distant relative of the decedent.

“Caridad recounted that, on December 29, 1989, she was in her house when an unidentified woman came and told her that her husband was killed by accused Ladiana. She immediately called up her sister-in-law before rushing to Jacinto Street where the gruesome incident allegedly transpired. Thereat, many people were milling around, and Caridad saw the lifeless body of Francisco lying in the middle of the road and being examined by [SPO2] Percival A. Gabinete.

“Caridad recalled that it was around 11:00 o’clock a.m. when she reached the place of the subject incident. At that point in time, she was not even allowed by the police to touch, much less get near to, the cadaver of Francisco. Caridad, expectedly, was crying and one of her aunts advised her to go home.

“Caridad maintained that she was aware that her husband was killed by accused Ladiana because this was what the woman actually told her. Moreover, accused Ladiana had given himself up to the police authorities.

“Caridad went on to narrate that, on December 30, 1989, she was at the police station, where she gave her written statement before police investigator PFC Virgilio Halili (hereinafter, ‘Halili’).

“Additionally, Caridad presented the Death Certificate of her husband and testified that he was eventually buried at the Lumban Cemetery. She declared that she had incurred about Twenty Thousand Pesos (P20,000.00) for the funeral, burial and other incidental expenses by reason of the death of Francisco.

“On cross-examination, Caridad testified that, on December 29, 1989, she was in her house and that she did not hear any gunshot between 10:30 and 11:00 o’clock a.m. Caridad also admitted she did not witness the killing of her husband.

“On questions propounded by the Court, Caridad narrated that her husband suffered two gunshot wounds - one on the upper right temple and the other on the left cheek. However, Caridad stated that she was told that the wounds were the entry and the exit points. She also told the Court that her husband was wearing short pants at the time of his death and that she found some bruises on his knees.

“Finally, Caridad recalled that, on the date of the incident, her husband was with his close friend, a certain Rodolfo Cabrera, and some other persons, and that they went to Jacinto Street to repair the steel humps which were used to block the street during school days for the protection and safety of the school children.

“2. PO2 LEOPOLDO DE RAMOS CACALDA, JR. (hereinafter, ‘CACALDA’) declared that he is a policeman assigned at the Lumban Police Station in Lumban, Laguna. He has been designated as the radio operator of the station since 1989.

“Cacalda recounted that, on December 29, 1989, at around 11:00 o’clock a.m., somebody, whose name he could no longer recall, reported to him about an existing trouble along Jacinto Street in Barangay Salac. Cacalda responded by going to the scene, where he was accompanied by Alberto Mercado, a member of the CAGFIL. Thereat, Cacalda saw the lifeless body of Francisco lying face up on the road. Cacalda did not examine the body of Francisco. He left the place of the incident when [SPO2] Percival A. Gabinete and other policemen subsequently arrived.

“Cacalda had gathered from the people milling around the body of Francisco that it was accused Ladiana who shot and killed Francisco. Cacalda immediately left to look for accused Ladiana. However, he eventually saw accused Ladiana already inside the jail of the police station and thereafter learned that said accused had surrendered to the police authority.

“Cacalda recalled that he was later on investigated by Halili because he was the responding policeman who went to the scene of the incident. Consequently, Cacalda executed a written statement in relation to the subject incident.

“On cross-examination, Cacalda testified that he was a radio operator and not an investigator of the police station. He also testified that he did not witness the incident subject matter of the case at bar.

“Cacalda went on to testify that the people milling around the place of the incident told him that accused Ladiana had already left. Because of this development, Cacalda proceeded to accused Ladiana’s house but was told that he had already gone to the police station. Cacalda accordingly went to the police station where he saw accused Ladiana already locked inside the jail. He also saw a stab wound on accused Ladiana’s right bicep but he did not anymore ask him how he sustained the said injury.

“3. DR. ROGELIO JAVAN y MAGRACIA (hereinafter, ‘Javan’) declared that he is a physician and the Municipal Health Officer of Lumban, Laguna.

“Javan recounted that he was the one who performed the necropsy on the cadaver of Francisco and that he had prepared the corresponding reports and/or documents relating thereto. Javan made a sketch representing the anterior and posterior views of the body of Francisco, and labeled and placed red markings on the gunshot wounds found on the said cadaver. The marking ‘Gunshot wound A’ is the point of entry, which is one (1) centimeter in diameter and situated two (2) inches behind the left ear. The marking ‘Gunshot wound B’ is the point of exit of ‘Gunshot wound A’, which is two (2) centimeters in diameter and found above the right cheekbone and one (1) inch below the right eye. Javan also testified that there is another gunshot wound and the point of entry and exit are labeled as ‘Gunshot wound C’ and ‘Gunshot wound D’, respectively. ‘Gunshot wound D’ is one and one-half (1-1/2) centimeters in diameter and located at the left cheek, three and one-half (3-1/2) centimeters below the left eye, while ‘Gunshot wound C’ is one (1) centimeter in diameter and found at the right lateral aspect of the neck, at the level of the adam’s apple.

“According to Javan, the assailant must be behind the victim when he inflicted ‘Gunshot wound A’. As regards ‘Gunshot wound C’, the assailant likewise must be behind the victim, at a distance of more than twenty-four (24) inches away.

“Lastly, Javan testified that he was not able to retrieve any bullet during the examination. However, judging from the size of the wound and the point of entry, Javan opined that the firearm used was probably a caliber 38.

“On questions propounded by the Court, Javan testified that ‘Gunshot wound A’ could have been fired first because the trajectory is on the same level so much so that the assailant and the victim could have been both

standing. Javan inferred that ‘Gunshot wound C’ could have been inflicted while the victim was already falling down. Javan then stressed that both wounds are fatal in nature.

“4. SPO2 PERCIVAL AMBROSIO GABINETE (hereinafter, ‘Gabinete’) declared that he is a police officer and a resident of No. 4055 Villa Josefina Subdivision, Sta. Cruz, Laguna.

“The testimony of Gabinete was subsequently dispensed with, upon the admission of the defense that he was part of the group of policemen who proceeded to the place of the subject incident and that he found the body of Francisco lying along the road. Additionally, the defense admitted the existence of the receipt issued by Funeraria de Mesa dated January 3, 1990 in the sum of Six Thousand Five Hundred Pesos (P6,500.00).

“5. MARIO TALAVERA CORTEZ (hereinafter, ‘Cortez’) declared that he is a retired Assistant Prosecutor of Laguna.

“Prior to the conduct of the examination-in-chief on Cortez, the defense counsel made an admission as to the authorship, authenticity, and voluntariness of the execution of the counter-affidavit of accused Ladiana, which was subscribed and sworn to before Cortez. In said counter-affidavit, accused Ladiana allegedly admitted to making the fatal shots on Francisco. However, accused Ladiana allegedly did so in self-defense as Francisco was then purportedly attacking accused Ladiana and had, in fact, already inflicted a stab wound on the arm of accused Ladiana.

“However, Cortez emphasized that he was not the one who conducted the preliminary investigation of the complaint which led to the filing of the subject case. Additionally, Cortez testified that he would not be able to anymore recognize the face of the affiant in the said counter-affidavit, but maintained that there was a person who appeared and identified himself as Josue Ladiana before he affixed his signature on the counter-affidavit.

“After the presentation of Cortez, the prosecution filed its formal offer of evidence and rested its case.

“On May 31, 1995, this Court issued a resolution admitting all the documentary evidence submitted by the prosecution.

“On August 20, 1996, accused Ladiana filed a Motion for Leave of Court to File Demurrer to Evidence dated August 16, 1995, claiming that: (i) a review of the documentary and testimonial evidence adduced by the prosecution allegedly failed to show that the accused is guilty of the offense charged; (ii) at best, the evidence submitted by the prosecution are allegedly hearsay in character, considering that the supposed eyewitness in the person of Rodolfo Cabrera was never presented in court; and (iii) the prosecution was allegedly merely able to prove the fact of death of the victim, but not the identity of the person who caused said death.

“On August 23, 1996, this Court issued an Order of even date holding that the filing of a demurrer to evidence is no longer appropriate considering that accused Ladiana received a copy of this Court’s resolution dated May 31, 1995 on the admission of the prosecution’s documentary exhibits as early as May 25, 1995.

“On September 2, 1996, in view of his perception that the evidence submitted by the prosecution is allegedly inadequate to sustain a conviction, accused Ladiana, through counsel, waived his right to present controverting evidence. Instead, he asked for time to file a written memorandum. Thus, both parties were given time within which to do so, after which the case shall be deemed submitted for resolution.

“Thereafter, this Court received on October 25, 1996 by mail the Memorandum for the defense. As for the prosecution, it opted not to file any.”[10] (Citations omitted)

Ruling of the Sandiganbayan

The Sandiganbayan ruled that the prosecution had been able to establish the guilt of petitioner beyond reasonable doubt. The court *quo* held that his Counter-Affidavit,[11] in which he had admitted to having fired the fatal shots that caused the victim’s death,[12] may be used as evidence against him. It underscored the admission made

by the defense as to the authorship, the authenticity and the voluntariness of the execution of the Counter-Affidavit.[13] In short, it ruled that the document had sufficiently established his responsibility for the death of the victim. However, it found no evidence of treachery; thus, it convicted him of homicide only.[14]

Hence, this Petition.[15]

Issues

In his Memorandum, petitioner raises the following issues for this Court's consideration:

"I. Whether or not the Sandiganbayan may convict the accused-petitioner beyond reasonable doubt of the crime of homicide even in the absence of any eyewitness who personally saw the sho[o]ting of the victim by the accused, basing it only on the testimony of the prosecutor who had administered the oath on the Counter-affidavit filed by petitioner-accused.

"II. Whether or not the prosecution has presented proof beyond reasonable doubt to overcome the constitutional presumption of innocence of the accused and his right against self-incrimination on the basis of the Counter-affidavit whose execution was admitted by the counsel of the petitioner, but not by the accused personally.

"III. Whether or not the Counter-affidavit of the accused-petitioner which was considered by the Sandiganbayan in its decision as similar to an extrajudicial confession may [be] admitted against him as evidenc[e] of guilt beyond reasonable doubt even if he was not assi[s]ted then by counsel and while he was under custodial investigation.

"IV. Whether or not the Sandiganbayan is constitutionally and legally correct in issuing the Order of August 23, 1996 denying the Motion for Leave of Court to File Demurrer to Evidence dated August 16, 1995 filed by the accused in accordance with Sec. 15 of Rule 120 of the 1985 Rules on Criminal Procedure in relation to Rule XXI of the Revised Rules of Sandiganbayan.

"V. Whether or not accused is entitled to the mitigating circumstance of voluntary surrender which fact was admitted by the prosecution as it even used the same as proof of the guilt of the accused." [16]

In short, petitioner raises the following questions in this appeal: (1) whether the Counter-Affidavit he executed during the preliminary investigation of this case is admissible proof showing his complicity in the crime, (2) whether the Sandiganbayan erred in denying his Motion for Leave to File a Demurrer to Evidence, and (3) whether he is entitled to the mitigating circumstance of voluntary surrender.

This Court's Ruling

The Petition is not meritorious.

First Issue:

Admissibility of Counter-Affidavit

Undeniably, the resolution of this case hinges mainly on the admissibility of the Counter-Affidavit[17] submitted by petitioner during the preliminary investigation. He argues that no counsel was present when the Affidavit was executed. In support of his argument, he cites the Constitution thus:

"SEC. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

x x x x x x x x

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.”[18]

It is well-settled that the foregoing legal formalities required by the fundamental law of the land apply only to extra-judicial confessions or admissions obtained during custodial investigations.[19] Indeed, the rights enumerated in the constitutional provision “exist only in custodial interrogations, or in-custody interrogation of accused persons.”[20]

Custodial interrogation is the questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.[21]

In the present case, petitioner admits that the questioned statements were made during the preliminary investigation, not during the custodial investigation. However, he argues that the right to competent and independent counsel also applies during preliminary investigations.

We disagree. A preliminary investigation is an inquiry or a proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty thereof and should be held for trial.[22]

Evidently, a person undergoing preliminary investigation before the public prosecutor cannot be considered as being under custodial investigation. In fact, this Court has unequivocally declared that a defendant on trial or under preliminary investigation is not under custodial interrogation.[23] It explained as follows:

“His [accused] interrogation by the police, if any there had been would already have been ended at the time of the filing of the criminal case in court (or the public prosecutor’s office). Hence, with respect to a defendant in a criminal case already pending in court (or the public prosecutor’s office), there is no occasion to speak of his right while under ‘custodial interrogation’ laid down by the second and subsequent sentences of Section 20, Article IV of the 1973 Constitution [now Section 12, Article III of the 1987 Constitution], for the obvious reason that he is no longer under ‘custodial interrogation.’”[24]

There is no question that even in the absence of counsel, the admissions made by petitioner in his Counter-Affidavit are not violative of his constitutional rights. It is clear from the undisputed facts that it was not exacted by the police while he was under custody or interrogation. Hence, the constitutional rights of a person under custodial investigation as embodied in Article III, Section 12 of the 1987 Constitution, are not at issue in this case.

However, the accused -- whether in court or undergoing preliminary investigation before the public prosecutor -- unquestionably possess rights that must be safeguarded. These include: 1) the right to refuse to be made witnesses; 2) the right not to have any prejudice whatsoever imputed to them by such refusal; 3) the right to testify on their own behalf, subject to cross-examination by the prosecution; and 4) while testifying, the right to refuse to answer a specific question that tends to incriminate them for some crime other than that for which they are being prosecuted.[25]

We do not, however, agree with the Sandiganbayan’s characterization of petitioner’s Counter-Affidavit as an extrajudicial confession. It is only an admission. Sections 26 and 33 of Rule 130 of the Revised Rules on Evidence distinguish one from the other as follows:

“SEC. 26. Admissions of a party. – The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

“SEC. 33. Confession. – The declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein, may be given in evidence against him.”

In a confession, there is an acknowledgment of guilt; in an admission, there is merely a statement of fact not directly involving an acknowledgment of guilt or of the criminal intent to commit the offense with which one is charged.[26] Thus, in the case at bar, a statement by the accused admitting the commission of the act charged against him but denying that it was done with criminal intent is an admission, not a confession.[27]

The Counter-Affidavit in question contains an admission that petitioner actually shot the victim when the latter was attacking him. We quote the pertinent portion:

“[K]aya itong si Kapitan San Juan ay sumugod at hinawakan ako sa may leeg ng aking suot na T-shirt upang ako ay muling saksakin; sa dahilang hindi ako makatakbo o makaiwas sa kabila ng aking pananalag hanggang magpaputok ako ng pasumala sa kanya; sa bilis ng pangyayari ay hindi ko alam na siya ay tinamaan;”[28]

Through the above statement, petitioner admits shooting the victim -- which eventually led to the latter's death -- but denies having done it with any criminal intent. In fact, he claims he did it in self-defense. Nevertheless, whether categorized as a confession or as an admission, it is admissible in evidence against him.

Further, we do not doubt the voluntariness of the Counter-Affidavit. Petitioner himself submitted it to the public prosecutor to justify his actions in relation to the charges hurled against him. It escapes this Court how he can cavalierly deny a document that he has voluntarily submitted and originally relied upon in his defense.

In general, admissions may be rebutted by confessing their untruth or by showing they were made by mistake. The party may also establish that the response that formed the admission was made in a jocular, not a serious, manner; or that the admission was made in ignorance of the true state of facts.[29] Yet, petitioner never offered any rationalization why such admissions had been made, thus, leaving them unrebutted. In addition, admissions made under oath, as in the case at bar, are evidence of great weight against the declarant. They throw on him the burden of showing a mistake.[30]

Petitioner contends that nowhere in the transcripts of this case can it be found that he has admitted to the authorship, the authenticity or the voluntariness of the Counter-Affidavit. We quote verbatim the proceedings in the Sandiganbayan:

“PJ GARCHITORENA

Well, he will identify the person who took the oath before him. Will you deny that it was your client who took the oath before the Fiscal at the preliminary investigation?

ATTY. ILAGAN

We will admit that, your Honor.

PJ GARCHITORENA

So in that case we will have no question about the authorship, authenticity and the voluntariness of the execution of the counter-affidavit dated July 31, 1990? Companiero?

ATTY ILAGAN

Admitted, your Honor.”[31]

The admissions of petitioner made through his counsel cannot be any clearer. To be sure, the unbroken stream of judicial dicta is that, in the conduct of their case, clients are bound by the actions of their counsels, save when the latter's negligence is so gross, reckless and inexcusable that the former are deprived of their day in court.[32] Also, clients, being bound by the actions of their counsels, cannot complain that the result of the litigation might have been different had their lawyers proceeded differently.[33] A counsel may err as to the competency of

witnesses, the sufficiency and the relevance of evidence, the proper defense, the burden of proof, the introduction or the withholding of witnesses or pieces of evidence, or the manner of arguing the case. This Court, however, has ruled several times that those are not even proper grounds for a new trial, unless the counsel's incompetence is so gross that the clients are prevented from fairly presenting their case.[34]

Having admitted that he had fatally shot the victim, petitioner had the duty of showing that the killing was justified, and that the latter incurred no criminal liability therefor.[35] Petitioner should have relied on the strength of his own evidence and not on the weakness of that for the prosecution. Even if his evidence be weak, it cannot be disbelieved after the accused has admitted the killing.[36]

Petitioner argues that it was the prosecution that indirectly raised the issue of self-defense. Hence, he could not be bound by it. This argument deserves scant consideration. As discussed earlier, the declarations contained in his Counter-Affidavit are admissions that may be used as evidence against him.[37] The Sandiganbayan did not unfairly presume that he had indeed raised the theory of self-defense, because this argument had already been laid out in his Counter-Affidavit. No presumption was necessary, because the admission was clear and unequivocal.

Neither do we believe petitioner's claim that the anti-graft court "miserably failed to give equal effect or treatment to all the allegations found therein (Counter-Affidavit) choosing deliberately and without reasonable basis the parts which are incriminating in character, and ignoring without sufficient legal basis the exculpatory assertions of the accused." [38]

The unsubstantiated and uncorroborated statements of petitioner in his Counter-Affidavit are utterly insufficient to discharge his burden of proving that the act of killing was justified. It is hornbook doctrine that self-defense must be proved with certainty by sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it.[39] It cannot be entertained if it is uncorroborated by any separate and competent evidence, and it is also doubtful.[40] The question whether the accused acted in self-defense is essentially a question of fact properly evaluated by the lower court; in this case, the Sandiganbayan.[41]

By itself, the Counter-Affidavit miserably fails to establish the requisites of self-defense enumerated in the law.[42] Had petitioner been more vigilant in protecting his rights, he could have presented clear and cogent evidence to prove those elements. But, as found by the court a quo, he not only failed to discharge the burden of proving the existence of the justifying circumstance of self-defense; he did not even bother to present any evidence at all.[43] So, we do not see how the Sandiganbayan could have been selective in its treatment of his Counter-Affidavit.

Verily, if the accused fails to discharge the burden of proving the existence of self-defense or of any other circumstance that eliminates criminal liability, his conviction shall of necessity follow, on the basis of his admission of the killing.[44] Upholding this principle does not in any way violate his right to be presumed innocent until proven guilty. When he admitted to having killed the victim, the burden of proving his innocence fell on him. It became his duty to establish by clear and convincing evidence the lawful justification for the killing.

Therefore, petitioner can no longer invoke his constitutional right to be presumed innocent of the crime charged.[45] As far as he is concerned, homicide has already been established. The fact of death and its cause were established by his admissions coupled with the other prosecution evidence including the Certificate of Death,[46] the Certificate of Post-Mortem Examination[47] and the Medico-Legal Findings.[48] The intent to kill is likewise presumed from the fact of death.[49]

Second Issue:

Denial of Motion for Leave to File Demurrer

Petitioner then argues that the Sandiganbayan erred in not giving due course to his Motion for Leave to File Demurrer to Evidence. He brands this denial as legally and constitutionally wrong.[50]

We disagree. Prior leave to file a demurrer to evidence is discretionary upon the trial court.[51] And, unless there is grave abuse amounting to lack or excess of jurisdiction in its denial, the trial court's resolution may not be disturbed.[52]

Final Issue: Voluntary Surrender

After vigorously arguing against his own Counter-Affidavit, petitioner, in a surprising change of tenor, implores this Court to consider his voluntary surrender to the police authorities as a mitigating circumstance. He argues that two of the prosecution witnesses testified that he had surrendered to the police authorities after the shooting incident.[53] To buttress his argument, he contends that the "main reason for his voluntary surrender is that he sincerely believe[d] that he was legally justified in defending himself as a policeman when he fought the victim after he was attacked by the latter." [54] It goes without saying that this statement only reaffirms the admissions contained in his Counter-Affidavit, which he so vehemently tried to discredit.

For voluntary surrender to mitigate criminal liability, the following elements must concur: 1) the offender has not been actually arrested, 2) the offender surrenders himself to a person in authority or to the latter's agent, and 3) the surrender is voluntary.[55] To be sufficient, the surrender must be spontaneous and made in a manner clearly indicating the intent of the accused to surrender unconditionally, either because they acknowledge their guilt or wish to save the authorities the trouble and the expense that will necessarily be incurred in searching for and capturing them.[56]

The only pieces of evidence in support of the plea of voluntary surrender made by petitioner are statements made by two (2) prosecution witnesses that they were allegedly told by other people that he had already gone to the police station. There is no showing that he was not actually arrested; or that when he went to the police station, he surrendered himself to a person in authority. Neither is there any finding that he has evinced a desire to own to any complicity in the killing.

We have ruled in the past that the accused who had gone to the police headquarters merely to report the shooting incident did not evince any desire to admit responsibility for the killing. Thus, he could not be deemed to have voluntarily surrendered.[57] In the absence of sufficient and convincing proof showing the existence of indispensable circumstances, we cannot appreciate voluntary surrender to mitigate petitioner's penalty.

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

SO ORDERED.

Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.

Puno, (Chairman), J., abroad on official business.

[1] Annex "A" of the Petition; rollo, pp. 71-85. Penned by Justice Gregory S. Ong with the concurrence of Justices Francis E. Garchitorena (then Division chairman and presiding justice) and Catalino R. Castañeda Jr. (member).

- [2] Annex “C” of the Petition; id., pp. 93-101.
- [3] Sandiganbayan Decision, p. 13; id., p. 84.
- [4] Records, pp. 1-2.
- [5] Id., p. 56.
- [6] Id., pp. 88-89. This was signed by Special Prosecution Officer Fidel D. Galindez and approved by then Ombudsman Conrado M. Vasquez.
- [7] Amended Information, p. 1; id, p. 88.
- [8] Atty. Balagtas P. Ilagan.
- [9] See Certificate of Arraignment; records, p. 100.
- [10] Sandiganbayan Decision, pp. 2-9; rollo, pp. 73-80.
- [11] Exhibit “H,” prosecution’s exhibits folder.
- [12] Sandiganbayan Decision, p. 10; rollo, p. 81.
- [13] Ibid.
- [14] Ibid.
- [15] This case was deemed submitted for resolution on May 9, 2001, upon receipt of petitioner’s Memorandum, signed by Jose A. Almo and Angel R. Purisima III. Respondent’s Memorandum, filed on April 18, 2001, was signed by Special Prosecutor Leonardo P. Tamayo, Deputy Special Prosecutor Robert E. Kallos, Acting ASAB Director Rodrigo V. Coquia, and Special Prosecution Officer Manuel T. Soriano Jr. of the Office of the Special Prosecutor (OSP).
- [16] Petitioner’s Memorandum, pp. 5-6; rollo, pp. 169-170; original in upper case.
- [17] Exh. “H” of the prosecution’s evidence.
- [18] Art. III, §12, 1987 Constitution.
- [19] People v. Salonga, GR No. 131131, June 21, 2001.
- [20] People v. Ayson, 175 SCRA 216, 230, July 7, 1989, per Narvasa, J. (later, CJ).
- [21] People v. Marra, 236 SCRA 565, September 20, 1994; People v. Logronio, 214 SCRA 519, October 13, 1992; People v. Ayson, supra.
- [22] Rule 112, §1, 2000 Revised Rules of Criminal Procedure.
- [23] People v. Ayson, supra.
- [24] Id., p. 232.
- [25] Id., p. 234.
- [26] People v. Lorenzo, 240 SCRA 624, January 26, 1995.
- [27] Francisco, The Revised Rules of Court in the Philippines Evidence, Vol. VII, Part I, 1997 ed., p. 303.
- [28] Petitioner’s Counter-Affidavit, p. 2; Exhibit “H”, prosecution’s exhibits folder.

[29] Francisco, *supra*, p. 319.

[30] *Ibid*.

[31] TSN, April 18, 1995, pp. 4-5.

[32] Ramos v. Dajoyag Jr., AC 5174, February 28, 2002; Villanueva v. People, 330 SCRA 695, April 12, 2000; Sublay v. NLRC, 324 SCRA 188, January 31, 2000; Alarcon v. CA, 323 SCRA 716, January 28, 2000; Velasquez v. CA, 309 SCRA 539, June 30, 1999.

[33] People v. Remudo, GR No. 127905, August 30, 2001; GoldLine Transit, Inc. v. Ramos, GR No. 144813, August 15, 2001; People v. Villanueva, 339 SCRA 482, August 31, 2000.

[34] Abrajano v. CA, 343 SCRA 68, October 13, 2000; People v. Salido, 258 SCRA 291, July 5, 1996.

[35] People v. Obzunar, 265 SCRA 547, December 16, 1996; People v. Doepante, 263 SCRA 691, October 30, 1996.

[36] People v. Damitan, GR No. 140544, December 7, 2001; People v. Iglesia, GR No. 132354, September 13, 2001; People v. Nepomuceno Jr., 298 SCRA 450, November 11, 1998; People v. Bautista, 254 SCRA 621, March 12, 1996.

[37] §26, Rule 130, Rules of Court.

[38] Petitioner's Memorandum, p. 9; rollo, p. 173.

[39] People v. Suyum, GR No. 137518, March 6, 2002; People v. Sanchez, 308 SCRA 264, June 16, 1999; People v. Balamban, 264 SCRA 619, November 21, 1996.

[40] People v. Suyum, *supra*; People v. Sarabia, 317 SCRA 684, October 29, 1999.

[41] People v. Suyum, *supra*; People v. Dano, 339 SCRA 515, September 1, 2000; People v. Sarabia, *supra*.

[42] Art. II, Revised Penal Code.

[43] Sandiganbayan Decision, p. 11, rollo, p. 82.

[44] People v. Suyum, *supra*; People v. Templa, GR No. 121897, August 16, 2001; People v. Cawaling, 293 SCRA 267, July 28, 1998; People v. Vallador, 257 SCRA 515, June 20, 1996.

[45] People v. Gemoya, 342 SCRA 63, October 4, 2000.

[46] Exh. "B" of the prosecution's evidence.

[47] Exh. "E" of the prosecution's evidence.

[48] Exh. "F" of the prosecution's evidence.

[49] People v. Gemoya, *supra*.

[50] Petitioner's Memorandum, p. 15; rollo, p. 179.

[51] Bernardo v. CA, 278 SCRA 782, September 5, 1997.

[52] Bernardo v. CA, *supra*; People v. Mercado, 159 SCRA 453, March 30, 1988.

[53] Petitioner's Memorandum, p. 16; rollo, p. 180.

[54] Ibid.

[55] *People v. Gutierrez*, GR No. 142905, March 18, 2002; *People v. Manlansing*, GR No. 131736-37, March 11, 2002; *People v. Sitchon*, GR No. 134362, February 27, 2002; *People v. Ancheta*, GR No. 138306-07, December 21, 2001.

[56] *People v. Boquila*, GR No. 136145, March 8, 2002; *People v. Cortezan*, GR No. 140732, January 29, 2002; *People v. Saul*, GR No. 124809, December 19, 2001; *People v. Viernes*, GR No. 136733-35, December 13, 2001.

[57] *People v. Valles*, 267 SCRA 103, January 28, 1997; *People v. Rogales*, 6 SCRA 830, November 30, 1962.

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