

ROWENO POMOY, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No. 150647. September 29, 2004*

Ponente: PANGANIBAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-150647/>**PANGANIBAN, J.:**

Well-established is the principle that the factual findings of the trial court, when affirmed by the Court of Appeals, are binding on the highest court of the land. However, when facts are misinterpreted and the innocence of the accused depends on a proper appreciation of the factual conclusions, the Supreme Court may conduct a review thereof. In the present case, a careful reexamination convinces this Court that an “accident” caused the victim’s death. At the very least, the testimonies of the credible witnesses create a reasonable doubt on appellant’s guilt. Hence, the Court must uphold the constitutional presumption of innocence.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to set aside the February 28, 2001 Decision[2] and the October 30, 2001 Resolution[3] of the Court of Appeals (CA) in CA-GR CR No. 18759. The CA affirmed, with modifications, the March 8, 1995 judgment[4] of the Regional Trial Court (RTC)[5] of Iloilo City (Branch 25) in Criminal Case No. 36921, finding Roweno Pomoy guilty of the crime of homicide. The assailed CA Decision disposed as follows:

“WHEREFORE, premises considered, MODIFIED as to penalty in the sense that the [Petitioner] ROWENO POMOY is sentenced to suffer an indeterminate prison term of six (6) years, four (4) months and ten (10) days of prison mayor minimum, as minimum, to fourteen (14) years eight (8) months and twenty (20) days of reclusion temporal medium, as maximum, the decision appealed from is hereby AFFIRMED in all other respects.”[6]

The challenged CA Resolution denied petitioner’s Motion for Reconsideration.

Petitioner was charged in an Information worded thus:

“That on or about the 4[th] day of January 1990, in the Municipality of Sara, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with his .45 service pistol, with deliberate intent and decided purpose to kill, and without any justifiable cause or motive, did then and there willfully, unlawfully and feloniously assault, attack and shoot one TOMAS BALBOA with the service pistol he was then provided, inflicting upon the latter gunshot wounds on the vital parts of his body, which directly caused the death of said victim thereafter.”[7]

The Facts**Version of the Prosecution**

The Office of the Solicitor General (OSG) presented respondent’s version of the facts as follows:

“Tomas Balboa was a master teacher of the Concepcion College of Science and Fisheries in Concepcion,

Iloilo.

“On January 4, 1990, about 7:30 in the morning, some policemen arrived at the Concepcion College to arrest Balboa, allegedly in connection with a robbery which took place in the municipality in December 1989. With the arrest effected, Balboa and the policemen passed by the Concepcion Elementary School where his wife, Jessica, was in a get-together party with other School Administrators. When his wife asked him, ‘Why will you be arrested?’ [H]e answered ‘[Even I] do not know why I am arrested. That is why I am even going there in order to find out the reason for my arrest.’

“Balboa was taken to the Headquarters of the already defunct 321st Philippine Constabulary Company at Camp Jalandoni, Sara, Iloilo. He was detained in the jail thereat, along with Edgar Samudio, another suspect in the robbery case.

“Later that day, about a little past 2 o’clock in the afternoon, petitioner, who is a police sergeant, went near the door of the jail where Balboa was detained and directed the latter to come out, purportedly for tactical interrogation at the investigation room, as he told Balboa: ‘Let’s go to the investigation room.’ The investigation room is at the main building of the compound where the jail is located. The jail guard on duty, Nicostrado Estepar, opened the jail door and walked towards the investigation room.

“At that time, petitioner had a gun, a .45 caliber pistol, tucked in a holster which was hanging by the side of his belt. The gun was fully embedded in its holster, with only the handle of the gun protruding from the holster.

“When petitioner and Balboa reached the main building and were near the investigation room, two (2) gunshots were heard. When the source of the shots was verified, petitioner was seen still holding a .45 caliber pistol, facing Balboa, who was lying in a pool of blood, about two (2) feet away. When the Commanding Officer of the Headquarters arrived, he disarmed petitioner and directed that Balboa be brought to the hospital. Dr. Palma (first name not provided) happened to be at the crime scene as he was visiting his brother in the Philippine Constabulary. When Dr. Palma examined Balboa, he (Dr. Palma) said that it was unnecessary to bring Balboa to the hospital for he was dead.

“Upon the request of Mrs. Jessica Balboa, the wife of the deceased, Dr. Ricardo Jabonete, the medico-legal officer of the National Bureau of Investigation, Region VI, Iloilo City, conducted an autopsy on the remains of Tomas Balboa. The following were his findings: ‘Pallor, integuments and nailbeds.

‘Wound, gunshot: (1) ENTRANCE, downwards and medially, edges, modified by sutures, surrounded by abrasion collar, 0.6 cm. In its chest, left side, 10.0 cms. from anterior midline, 121.0 cms. From left heel, directed medially backwards from left to right, penetrating chest wall thru 5th intercostals space into thoracic cavity, perforating thru and thru, upper lobe, left lung, lacerating left ventricular wall causing punched out fracture, 8th thoracic vertebra and make an EXIT, stellate in shape, 1.0 x 0.8 cm. Edges, modified by sutures, back, right side, 8.0 cms. From posterior midline, 117.0 cms. From right heel (2) ENTRANCE, ovaloid, oriented medially downwards, edges sutured, 0.7 cm. on its widest portion, at infero-medial border, hypochondriac region, left side, 4.0 cms. From anterior midline, 105.0 cms. From left heel, directed backwards, laterally wall into penetrating abdominal cavity, perforating thru and thru, stomach, head of the pancreas and mesentery, make an exit, ovaloid, 1.0 x 0.8 cm., oriented medially upwards, edges, sutured, back, left side, level of 9th intercostal space, 4.5 cms. From posterior midline, 110.0 cms. From left heel. x x x.

‘CAUSE OF DEATH: Hemorrhage, massive secondary to gunshot wounds on chest and abdomen.

‘REMARKS: Body previously embalmed and autopsied.’

“Dr. Jaboneta testified that the two (2) wounds he found on x x x Balboa’s body were gunshot wounds. The entrance of [W]ound No. 1 was to the left side of the chest about the left nipple and exited to the right side of the back. Its trajectory was backwards then downwards from left to right. As to the possible position of the assailant,

Dr. Jaboneta opined that the nozzle of the gun was probably in front of the victim and was more to the left side, and the gun must have been a little bit higher than the entrance wound. Wound No. 2 was located immediately below the arch of the ribs, left side. Its direction was backwards and laterally upwards. Dr. Jaboneta estimated that when it was inflicted, the assailant must have pointed the gun's nozzle to the right side front of the victim. The distance between the entrance points of wounds No. 1 and No. 2 was found to be about 16.0 centimeters.”[8]

Version of the Defense

The Petition adopted the narration of facts in the assailed CA Decision, which in turn culled them from the trial court. The RTC summarized the testimonies of Defense Witnesses Erna Basa, the lone eyewitness to the incident; Eden Legaspi; Dr. Salvador Mallo Jr.; and petitioner himself, as follows:

“Erna Basa:

“x x x [O]n January 4, 1990, she was working in their office in the camp up to the afternoon; at about past 2 o'clock that afternoon while working on the backlogs, she heard some noise and exchange of words which were not clear, but it seemed there was growing trouble; she opened the door to verify and saw Roweno Pomoy and Tomas Balboa grappling for the possession of the gun; she was inside the room and one meter away from the door; Pomoy and Balboa while grappling were two to three meters away from the door; the grappling happened so fast and the gun of Pomoy was suddenly pulled out from its holster and then there was explosion; she was not certain who pulled the gun. x x x.

“Eden Legaspi:

“x x x [A]s early as 1:30 o'clock in the afternoon of January 4, 1990 she was inside the investigation room of the PC at Camp Jalandoni, Sara, Iloilo; at about 2 o'clock that same afternoon while there inside, she heard a commotion outside and she remained seated on the bench; when the commotion started they were seated on the bench and after the commotion that woman soldier (referring to Erna Basa) stood up and opened the door and she saw two persons grappling for the possession of a gun and immediately two successive shots rang out; she did not leave the place where she was seated but she just stood up; after the shots, one of the two men fall down x x x.

“Accused-petitioner Roweno Pomoy:

“He is 30 years old and a PNP member of the Iloilo Provincial Mobile Force Company then attached to the defunct 321[st] PC Company; he was one of the investigators of their outfit; about 2 o'clock or past that time of January 4, 1990 he got Tomas Balboa from their stockade for tactical interrogation; as he was already holding the door knob of their investigation room and about to open and enter it, all of a sudden he saw Tomas Balboa approach him and take hold or grab the handle of his gun; Tomas Balboa was a suspect in a robbery case who was apprehended by the police of Concepcion and then turned over to them (PC) and placed in their stockade; he asked the sergeant of the guard to let Balboa out of the stockade for interrogation; from the stockade with Balboa walking with him, he had his .45 caliber pistol placed in his holster attached to his belt on his waist; then as he was holding the doorknob with his right hand to open the door, the victim, who was two meters away from him, suddenly approached him and grabbed his gun, but all of a sudden he held the handle of his gun with his left hand; he released his right hand from the doorknob and, with that right hand, he held the handle of his gun; Tomas Balboa was not able to take actual hold of the gun because of his efforts in preventing him (Balboa) from holding the handle of his gun; he used his left hand to parry the move of Balboa; after he held the handle of his gun with his right hand, in a matter of seconds, he felt somebody was holding his right hand; he and Balboa grappled and in two or three seconds the gun was drawn from its holster as both of them held the gun; more grappling followed and five seconds after the gun was taken from its holster it fired, the victim was to his right side when the attempt to grab his gun began and was still to his right when the gun was drawn from its holster until it fired, as they were still grappling or wrestling; his gun was already loaded in

its chamber and cocked when he left his house, and it was locked when it fired; during the grappling he used his left hand to prevent Balboa from holding his gun, while the victim used his right hand in trying to reach the gun; after the gun fired, they were separated from each other and Balboa fell; he is taller than Balboa though the latter was bigger in build; he cannot say nor determine who of them was stronger; after Balboa fell, Sgt. Alag shouted saying 'stop that' and he saw Sgt. Alag approaching; sometime after, Capt. Rolando Maclang, their commanding officer, came, got his gun, and said that the case be investigated as to what really happened. He said that when his gun was put in its holster only its handle protrudes or comes out from it.

"Upon cross-examination, he said that Balboa was a suspect in a robbery case that happened during the first week of December, 1989; he was the one who filed that case in the town of San Dionisio and that case involves other persons who were also detained; before January 4, 1990 he had also the chance to invite and interrogate Balboa but who denied any robbery case; x x x [I]t was after he took his lunch that day when Capt. Maclang called him to conduct the interrogation; when he took Balboa from the stockade he did not tell him that he (Balboa) was to be investigated in the investigation room which was housed in the main building which is fifty meters, more or less, from the stockade, likewise houses the administrative office, the office of the commanding officer, officer of the operations division and that of the signal division; his gun was in its holster when the victim tried to grab it (gun); from the time he sensed that the victim tried to grab his gun, he locked the victim; the hand of the victim was on top of his hand and he felt the victim was attempting to get his gun; that the entire handle of his gun was exposed when placed inside its holster; he cannot tell whether the victim, while struggling with him, was able to hold any portion of his gun from the tip of its barrel to the point where its hammer is located; during the incident his gun was fully loaded and cocked; Sgt. Alag did not approach, but just viewed them and probably reported the incident to their commanding officer; he was not able to talk to Sgt. Alag as he (Pomoy) was not in his right sense; when his commanding officer came some five to ten minutes later and took away his gun he did not tell him anything.

"Dr. Salvador Mallo Jr.

"He is the Rural Health Physician of Sara who conducted the autopsy on the cadaver of Tomas Balboa that afternoon of January 4, 1990; in his autopsy findings respecting which he made an autopsy report he said he found two entrance wounds on the victim, the first on the left chest with trajectory medially downward, while the second one is on the left side of the stomach with trajectory somewhat going upward; at the same time of his examination he saw this victim to be wearing a light-colored T-shirt and a jacket; other than the T-shirt worn by the victim, he did not see or find any powder burns and marks and that those dotted marks in the T-shirt were believed by him to be powder burns as they look like one; he also found a deformed slug in the pocket of the jacket of the victim."[9]

Ruling of the Court of Appeals

The CA anchored its Decision on the following factual findings: 1) the victim was not successful in his attempts to grab the gun, since petitioner had been in control of the weapon when the shots were fired; 2) the gun had been locked prior to the alleged grabbing incident and immediately before it went off; it was petitioner who released the safety lock before he deliberately fired the fatal shots; and 3) the location of the wounds found on the body of the deceased did not support the assertion of petitioner that there had been a grappling for the gun.

To the appellate court, all the foregoing facts discredited the claim of petitioner that the death of Balboa resulted from an accident. Citing *People v. Reyes*,^[10] the CA maintained that "a revolver is not prone to accidental firing if it were simply handed over to the deceased as appellant claims because of the nature of its mechanism, unless it was already first cocked and pressure was exerted on the trigger in the process of allegedly handing it over. If it were uncocked, then considerable pressure had to be applied on the trigger to fire the revolver. Either way, the shooting of the deceased must have been intentional because pressure on the trigger was necessary to make the gun fire."[11]

Moreover, the appellate court obviously concurred with this observation of the OSG:

“[Petitioner’s] theory of accident would have been easier to believe had the victim been shot only once. In this case, however, [petitioner] shot the victim not only once but twice, thereby establishing [petitioner’s] determined effort to kill the victim. By any stretch of the imagination, even assuming without admitting that the first shot was accidental, then it should not have been followed by another shot on another vital part of the body. The fact that [petitioner] shot the victim two (2) times and was hit on two different and distant parts of the body, inflicted from two different locations or angles, means that there was an intent to cause the victim’s death, contrary to [petitioner’s] pretensions of the alleged accidental firing. It is an oft-repeated principle that the location, number and gravity of the wounds inflicted on the victim have a more revealing tale of what actually happened during the incident. x x x.[12]

Furthermore, the CA debunked the alternative plea of self-defense. It held that petitioner had miserably failed to prove the attendance of unlawful aggression, an indispensable element of this justifying circumstance.

While substantially affirming the factual findings of the RTC, the CA disagreed with the conclusion of the trial court that the aggravating circumstance of abuse of public position had attended the commission of the crime. Accordingly, the penalty imposed by the RTC was modified by the appellate court in this manner:

“x x x [F]or public position to be appreciated as an aggravating circumstance, the public official must use his influence, prestige and ascendancy which his office gives him in realizing his purpose. If the accused could have perpetrated the crime without occupying his position, then there is no abuse of public position.’ (People vs. Joyno, 304 SCRA 655, 670). In the instant case, there is no showing that the [petitioner] had a premeditated plan to kill the victim when the former fetched the latter from the stockade, thus, it cannot be concluded that the public position of the [petitioner] facilitated the commission of the crime. Therefore, the trial court’s finding that the said aggravating circumstance that [petitioner] took advantage of his public position to commit the crime cannot be sustained. Hence, there being no aggravating and no mitigating circumstance proved, the maximum of the penalty shall be taken from the medium period of reclusion temporal, a penalty imposable for the crime of homicide. x x x.”[13]

Hence, this Petition.[14]

Issues

In his Memorandum, petitioner submitted the following issues for the Court’s consideration:

The Court of Appeals committed serious and reversible error in affirming petitioner’s conviction despite the insufficiency of the prosecution’s evidence to convict the petitioner, in contrast to petitioner’s overwhelming evidence to support his theory/defense of accident.

“I.

“II. The Court of Appeals committed grave and reversible error in affirming the conviction of the petitioner on a manifestly mistaken inference that when the gun fired, the petitioner was in full control of the handle of the gun, because what the testimonies of disinterested witnesses and the petitioner reveal was that the gun fired while petitioner and Balboa were both holding the gun in forceful efforts to wrest the gun from each other.

“III. The Court of Appeals gravely erred in affirming the solicitor general’s observation that the fact that petitioner shot the victim twice establishes petitioner’s determined effort to kill the victim.

“IV. The appellate court committed serious misapprehension of the evidence presented when it ruled that the trajectory of the wounds was front-to-back belying the allegation of petitioner that he and the victim were side-by-side each other when the grappling ensued.

“V. The Court of Appeals failed to discern the real import of petitioner’s reaction to the incident when it stated that the dumbfounded reaction of petitioner after the incident strongly argues against his claim of accidental shooting.

“VI. The appellate court committed grave error when it disregarded motive or lack of it in determining the existence of voluntariness and intent on the part of petitioner to shoot at the victim when the same was put in serious doubt by the evidence presented.

“VII. The Court of Appeals was mistaken in ruling that the defense of accident and self-defense are inconsistent.

“VIII. The Court of Appeals obviously erred in the imposition of the penalties and damages.”[15]

In sum, the foregoing issues can be narrowed down to two: First, whether the shooting of Tomas Balboa was the result of an accident; and second, whether petitioner was able to prove self-defense.

The Court’s Ruling

The Petition is meritorious.

First Issue:

Accidental Shooting

Timeless is the legal adage that the factual findings of the trial court, when affirmed by the appellate court, are conclusive.[16] Both courts possess time-honored expertise in the field of fact finding. But where some facts are misinterpreted or some details overlooked, the Supreme Court may overturn the erroneous conclusions drawn by the courts a quo. Where, as in this case, the facts in dispute are crucial to the question of innocence or guilt of the accused, a careful factual reexamination is imperative.

Accident is an exempting circumstance under Article 12 of the Revised Penal Code:

“Article 12. Circumstances which exempt from criminal liability. – The following are exempt from criminal liability:

x x x x x x x x

‘4. Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intent of causing it.’”

Exemption from criminal liability proceeds from a finding that the harm to the victim was not due to the fault or negligence of the accused, but to circumstances that could not have been foreseen or controlled.[17] Thus, in determining whether an “accident” attended the incident, courts must take into account the dual standards of lack of intent to kill and absence of fault or negligence. This determination inevitably brings to the fore the main question in the present case: was petitioner in control of the .45 caliber pistol at the very moment the shots were fired?

Petitioner Not in Control of the Gun When It Fired

The records show that, other than petitioner himself, it was Erna Basa who witnessed the incident firsthand. Her account, narrated during cross-examination, detailed the events of that fateful afternoon of January 4, 1990 as follows:

“ATTY. TEODOSIO:

Q.

You said that while you were inside the investigation room you heard a commotion. That commotion which you heard, did you hear any shouting as part of that commotion which you heard?

A.

Moderately there was shouting and their dialogue was not clear. It could not be understood.

Q.

Did you hear any voices as part of that commotion?

A.

No, sir.

Q.

From the time you entered the investigation room you did not hear any voice while you were inside the investigation room as part of that commotion?

A.

There was no loud voice and their conversation could not be clarified. They were talking somewhat like murmuring or in a low voice but there was a sort of trouble in their talks.

COURT:

Q.

Was there a sort of an exchange of words in their conversation?

A.

Yes, sir.

X X X X X X X X

Q.

When you opened the door, you saw Sgt. Pomoy and Mr. Balboa the deceased in this case? Am I correct?

A.

Yes, sir.

Q.

And when you saw Sgt. Pomoy was he holding a gun?

A.

Not yet, the gun was still here. (Witness illustrating by pointing to her side) and I saw both of them grappling for that gun.

Q.

Where was the gun at that time?

A.

The gun was in its holster. (Witness illustrating by pointing to [her] side.)

Q.

When you demonstrated you were according to you saw the hands holding the gun. It was Sgt. Pomoy who was holding the gun with his right hand?

A.

I saw two hands on the handle of the gun in its holster, the hand of Sir Balboa and Sgt. Pomoy.

COURT:

Q.

At that precise moment the gun was still in its holster?

A.

When I took a look the gun was still in its holster with both hands grappling for the possession of the gun.

Q.

How many hands did you see?

A.

Two.

Q.

One hand of Sgt. Pomoy and one hand is that of the victim?

A.

Yes, sir.

COURT:

Proceed.

ATTY TEODOSIO:

Q.

Which hand of Sgt. Pomoy did you see holding the gun?

A.

Right hand of Sgt. Pomoy.

Q.

And when you see that right hand of Sgt. Pomoy, was it holding the gun?

A.

The right hand of Sgt. Pomoy was here on the gun and Sir Balboa's hand was also there. Both of them were holding the gun.

Q.

Which part of the gun was the right hand of Sgt. Pomoy holding?

A.

The handle.

Q.

And was he facing Tomas Balboa when he was holding the gun with his right hand?

A.

At first they were not directly facing each other.

Q.

So later, they were facing each other?

A.

They were not directly facing each other. Their position did not remain steady as they were grappling for the possession of the gun force against force.

COURT:

Q.

What was the position of the victim when the shots were fired?

A.

When I saw them they were already facing each other.

Q.

What was the distance?

A.

Very close to each other.

Q.

How close?

A.

Very near each other.

Q.

Could it be a distance of within one (1) foot?

A.

Not exactly. They were close to each other in such a manner that their bodies would touch each other.

Q.

So the distance is less than one (1) foot when the gun fired?

A.

One (1) foot or less when the explosions were heard.

Q.

And they were directly facing each other?

A.

Yes, sir.

COURT:

Proceed.

Q.

Were you able to see how the gun was taken out from its holster?

A.

While they were grappling for the possession of the gun, gradually the gun was released from its holster and then there was an explosion.

Q.

And when the gun fired the gun was on Tomas Balboa?

A.

I could not see towards whom the nozzle of the gun was when it fired because they were grappling for the possession of the gun.

Q.

Did you see when the gun fired when they were grappling for its possession?

A.

Yes sir, I actually saw the explosion. It came from that very gun.

Q.

Did you see the gun fired when it fired for two times?

A.

Yes, sir.

Q.

Did you see the barrel of the gun when the gun fired?

A.

I could not really conclude towards whom the barrel of the gun was pointed to because the gun was turning.

x x x x x x x x

Q.

Could you tell the court who was holding the gun when the gun fired?

A.

When the gun exploded, the gun was already in the possession of Sgt. Pomoy. He was the one holding the gun.

Q.

After the gun went off, you saw the gun was already in the hand of Sgt. Pomoy?

A.

Yes, sir.

Q.

How soon after the gun went off when you saw the gun in the hand of Sgt. Pomoy?

A.

After Balboa had fallen and after they had separated themselves with each other, it was then that I saw Sgt. Pomoy holding the gun.

COURT:

Proceed.

ATTY. TEODOSIO:

Q.

When the gun was taken out from its holster, Sgt. Pomoy was the one holding the handle of the gun? Am I correct?

A.

Both of them were holding the handle of the gun.

Q.

So when the gun was still in its holster, two of them were holding the gun?

A.

Yes sir, they were actually holding the gun, Sgt. Pomoy and Sir Balboa.

Q.

It was the right hand of Sgt. Pomoy who was holding the handle of the gun as you testified?

A.

Yes, sir.

Q.

Which hand of Balboa was holding the handle of the gun?

A.

Left hand.

Q.

At the time Balboa was holding the handle of the gun with his left hand, was he in front of Sgt. Pomoy?

A.

They had a sort of having their sides towards each other. Pomoy's right and Balboa's left sides [were] towards each other. They were side by side at a closer distance towards each other.

x x x x x x x x

Q.

It was actually Sgt. Pomoy who was holding the handle of the gun during that time?

A.

When I looked out it was when they were grappling for the possession of the gun and the right hand of Sgt. Pomoy was holding the handle of the gun.

Q.

When you saw them did you see what position of the handle of the gun was being held by Tomas Balboa? The rear portion of the handle of the gun or the portion near the trigger?

A.

When I looked at them it was the hand of Sgt. Pomoy holding the handle of the gun with his right hand with the hand of Sir Balboa over the hand of Pomoy, the same hand holding the gun.

Q.

It was in that position when the gun was removed from its holster?

A.

When the gun pulled out from its holster, I was not able to notice clearly anymore whose hand was holding the gun when I saw both their hands were holding the gun.

Q.

When you said this in [the] vernacular, ‘Daw duha na sila nagakapot’, what you really mean?

A.

Both of them were holding the gun.

Q.

But Sgt. Pomoy still holding the handle of the gun?

A.

Still both of them were holding the handle of the gun.

Q.

With the hand of Balboa still on the top of the hand of Sgt. Pomoy as what you have previously said when the gun was in the holster of Sgt. Pomoy?

A.

When the gun was pulled from its holster, I saw that Sgt. Pomoy’s right hand was still on the handle of the gun with the left hand of Sir Balboa over his right hand of Sgt. Pomoy, like this (witness illustrating by showing his right hand with her left hand over her right hand as if holding something. The thumb of the left hand is somewhat over the index finger of the right hand.)

COURT:

Which hand of the victim was used by him when the gun was already pulled out form its holster and while the accused was holding the handle of the gun?

A.

Left hand.

Q.

So, he was still using the same left hand in holding a portion of the handle of the gun up to the time when the gun was pulled out from its holster?

A.

Yes sir, the same left hand and that of Pomoy his right hand because the left hand of Pomoy was used by him in parrying the right hand of Sir Balboa which is about to grab the handle of the gun.

COURT:

Q.

So in the process of grappling he was using his left hand in pushing the victim away from him?

A.

Yes, sir.

Q.

What about the right hand of the victim, what was he doing with his right hand?

A.

The victim was trying to reach the gun with his right hand and Pomoy was using his left hand to protect the victim from reaching the gun with his right hand.

COURT:

Proceed.

ATTY. TEODOSIO:

Q.

Did you say a while ago that Mr. Balboa was able to hold the barrel of the gun of Sgt. Pomoy?

A.

Yes, sir.

Q.

And that was at the time before the shots were fired?

A.

Yes, he was able to hold the tip of the barrel of the gun using his right hand.

COURT:

Q.

That was before the gun fired?

A.

Yes, sir.”[18]

The foregoing account demonstrates that petitioner did not have control of the gun during the scuffle. The deceased persistently attempted to wrest the weapon from him, while he resolutely tried to thwart those attempts. That the hands of both petitioner and the victim were all over the weapon was categorically asserted by the eyewitness. In the course of grappling for the gun, both hands of petitioner were fully engaged -- his right hand was trying to maintain possession of the weapon, while his left was warding off the victim. It would be difficult to imagine how, under such circumstances, petitioner would coolly and effectively be able to release the safety lock of the gun and deliberately aim and fire it at the victim.

It would therefore appear that there was no firm factual basis for the following declaration of the appellate court: “[Petitioner] admitted that his right hand was holding the handle of the gun while the left hand of the victim was over his right hand when the gun was fired. This declaration would safely lead us to the conclusion that when the gun went off herein [petitioner] was in full control of the gun.”[19]

Release of the Gun’s Safety Lock and Firing of the Gun Both Accidental

Petitioner testified that the .45 caliber service pistol was equipped with a safety lock that, unless released, would prevent the firing of the gun. Despite this safety feature, however, the evidence showed that the weapon fired and hit the victim -- not just once, but twice. To the appellate court, this fact could only mean that petitioner had deliberately unlocked the gun and shot at the victim. This conclusion appears to be non sequitur.

It is undisputed that both petitioner and the victim grappled for possession of the gun. This frenzied grappling for the weapon -- though brief, having been finished in a matter of seconds -- was fierce and vicious. The eyewitness account amply illustrated the logical conclusion that could not be dismissed: that in the course of the scuffle, the safety lock could have been accidentally released and the shots accidentally fired.

That there was not just one but two shots fired does not necessarily and conclusively negate the claim that the shooting was accidental, as the same circumstance can easily be attributed to the mechanism of the .45 caliber service gun. Petitioner, in his technical description of the weapon in question, explained how the disputed second shot may have been brought about:

“x x x Petitioner also testified on cross-examination that a caliber .45 semi-automatic pistol, when fired, immediately slides backward throwing away the empty shell and returns immediately carrying again a live bullet in its chamber. Thus, the gun can, as it did, fire in succession. Verily, the location of, and distance between the wounds and the trajectories of the bullets jibe perfectly with the claim of the petitioner: the trajectory of the first shot going downward from left to right thus pushing Balboa’s upper body, tilting it to the left while Balboa was still clutching petitioner’s hand over the gun; the second shot hitting him in the stomach with the bullet going upward of Balboa’s body as he was falling down and releasing his hold on petitioner’s hand x x x.”[20]

Thus, the appellate court’s reliance on *People v. Reyes*[21] was misplaced. In that case, the Court disbelieved the accused who described how his gun had exploded while he was simply handing it over to the victim. Here, no similar claim is being made; petitioner has consistently maintained that the gun accidentally fired in the course of his struggle with the victim. More significantly, the present case involves a semi-automatic pistol, the mechanism of which is very different from that of a revolver, the gun used in *Reyes*. [22] Unlike a revolver, a semi-automatic

pistol, as sufficiently described by petitioner, is prone to accidental firing when possession thereof becomes the object of a struggle.

**Alleged Grappling Not Negated
by Frontal Location of Wounds**

On the basis of the findings of Dr. Jaboneta showing that the wounds of the deceased were all frontal, the appellate court rejected petitioner's claim that a grappling for the weapon ever occurred. It held that "if there was indeed a grappling between the two, and that they had been side [by] side x x x each other, the wounds thus inflicted could not have had a front-to-back trajectory which would lead to an inference that the victim was shot frontally, as observed by Dr. Jaboneta." [23]

Ordinarily, the location of gunshot wounds is indicative of the positions of the parties at the precise moment when the gun was fired. Their positions would in turn be relevant to a determination of the existence of variables such as treachery, aggression and so on.

In the factual context of the present case, however, the location of the wounds becomes inconsequential. Where, as in this case, both the victim and the accused were grappling for possession of a gun, the direction of its nozzle may continuously change in the process, such that the trajectory of the bullet when the weapon fires becomes unpredictable and erratic. In this case, the eyewitness account of that aspect of the tragic scuffle shows that the parties' positions were unsteady, and that the nozzle of the gun was neither definitely aimed nor pointed at any particular target. We quote the eyewitness testimony as follows:

"Q.

And when the gun fired the gun was on Tomas Balboa?

A.

I could not see towards whom the nozzle of the gun was when it fired because they were grappling for the possession of the gun.

x x x x x x x x

Q.

Did you see the barrel of the gun when the gun fired?

A.

I could not really conclude towards whom the barrel of the gun was pointed to because the gun was turning." [24]

x x x x x x x x

"Q

And was he facing Tomas Balboa when he was holding the gun with his right hand?

A

At first, they were not directly facing each other.

Q

So later, they were facing each other?

A

They were not directly facing each other. Their position did not remain steady as they were grappling for the possession of the gun force against force.”[25]

In his Petition, this explanation is given by petitioner:

“x x x. The Court of Appeals erred in concluding that Balboa was shot frontally. First, because the position of the gun does not necessarily indicate the position of the person or persons holding the gun when it fired. This is especially true when two persons were grappling for the possession of the gun when it fired, as what exactly transpired in this case. x x x.

“[The] testimony clearly demonstrates that the petitioner was on the left side of the victim during the grappling when the gun fired. The second wound was thus inflicted this wise: when the first shot hit Balboa, his upper body was pushed downward owing to the knocking power of the caliber .45 pistol. But he did not let go of his grip of the hand of petitioner and the gun, Balboa pulling the gun down as he was going down. When the gun went off the second time hitting Balboa, the trajectory of the bullet in Balboa’s body was going upward because his upper body was pushed downward twisting to the left. It was then that Balboa let go of his grip. On cross-examination, petitioner testified, what I noticed was that after successive shots we separated from each other. This sequence of events is logical because the protagonists were grappling over the gun and were moving very fast. x x x.” [26]

Presence of All the Elements of Accident

The elements of accident are as follows: 1) the accused was at the time performing a lawful act with due care; 2) the resulting injury was caused by mere accident; and 3) on the part of the accused, there was no fault or no intent to cause the injury.[27] From the facts, it is clear that all these elements were present. At the time of the incident, petitioner was a member -- specifically, one of the investigators -- of the Philippine National Police (PNP) stationed at the Iloilo Provincial Mobile Force Company. Thus, it was in the lawful performance of his duties as investigating officer that, under the instructions of his superior, he fetched the victim from the latter’s cell for a routine interrogation.

Again, it was in the lawful performance of his duty as a law enforcer that petitioner tried to defend his possession of the weapon when the victim suddenly tried to remove it from his holster. As an enforcer of the law, petitioner was duty-bound to prevent the snatching of his service weapon by anyone, especially by a detained person in his custody. Such weapon was likely to be used to facilitate escape and to kill or maim persons in the vicinity, including petitioner himself.

Petitioner cannot be faulted for negligence. He exercised all the necessary precautions to prevent his service weapon from causing accidental harm to others. As he so assiduously maintained, he had kept his service gun locked when he left his house; he kept it inside its holster at all times, especially within the premises of his working area.

At no instance during his testimony did the accused admit to any intent to cause injury to the deceased, much less kill him. Furthermore, Nicostrato Estepar, the guard in charge of the detention of Balboa, did not testify to any behavior on the part of petitioner that would indicate the intent to harm the victim while being fetched from the detention cell.

The participation of petitioner, if any, in the victim's death was limited only to acts committed in the course of the lawful performance of his duties as an enforcer of the law. The removal of the gun from its holster, the release of the safety lock, and the firing of the two successive shots -- all of which led to the death of the victim -- were sufficiently demonstrated to have been consequences of circumstances beyond the control of petitioner. At the very least, these factual circumstances create serious doubt on the latter's culpability.

Petitioner's Subsequent Conduct

Not Conclusive of Guilt

To both the trial and the appellate courts, the conduct of petitioner immediately after the incident was indicative of remorse. Allegedly, his guilt was evident from the fact that he was "dumbfounded," according to the CA; was "mum, pale and trembling," according to the trial court. These behavioral reactions supposedly point to his guilt. Not necessarily so. His behavior was understandable. After all, a minute earlier he had been calmly escorting a person from the detention cell to the investigating room; and, in the next breath, he was looking at his companion's bloodied body. His reaction was to be expected of one in a state of shock at events that had transpired so swiftly and ended so regrettably.

Second Issue:

Self-Defense

Petitioner advanced self-defense as an alternative. Granting *arguendo* that he intentionally shot Balboa, he claims he did so to protect his life and limb from real and immediate danger.

Self-defense is inconsistent with the exempting circumstance of accident, in which there is no intent to kill. On the other hand, self-defense necessarily contemplates a premeditated intent to kill in order to defend oneself from imminent danger.[28] Apparently, the fatal shots in the instant case did not occur out of any conscious or premeditated effort to overpower, maim or kill the victim for the purpose of self-defense against any aggression; rather, they appeared to be the spontaneous and accidental result of both parties' attempts to possess the firearm.

Since the death of the victim was the result of an accidental firing of the service gun of petitioner -- an exempting circumstance as defined in Article 12 of the Revised Penal Code -- a further discussion of whether the assailed acts of the latter constituted lawful self-defense is unnecessary.

WHEREFORE, the Petition is GRANTED and the assailed Decision REVERSED. Petitioner is ACQUITTED.

No costs.

SO ORDERED.

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

[1] Rollo, pp. 9-47.

[2] *Id.*, pp. 49-68. Sixteenth Division. Penned by Justice B. A. Adefuin-de la Cruz (Division chair) and concurred in by Justices Andres B. Reyes Jr. and Rebecca de Guia-Salvador (members).

[3] *Id.*, p. 70.

[4] CA rollo, pp. 9-20.

[5] Written by Judge Bartolome M. Fanuñal.

[6] CA rollo, p. 8.

[7] Dated October 28, 1991; CA rollo, p. 8.

[8] Comment, pp. 2-7; rollo, pp. 77-82. Citations omitted.

[9] Petition, pp. 5-11; rollo, pp. 13-19. Citations omitted.

[10] 69 SCRA 474, 479, February 27, 1976.

[11] CA Decision, p. 16; rollo, p. 64.

[12] *Id.*, pp. 17 and 65. Italics supplied.

[13] CA Decision, p. 19; rollo, p. 67.

[14] This case was deemed submitted for decision on January 13, 2003, upon this Court's receipt of respondent's Memorandum, signed by Assistant Solicitor General Josefina C. Castillo and Associate Solicitor Josephine D. Arias. Petitioner's Memorandum, signed by Atty. Ferdinand M. Negre and Atty. Karen O. Amurao-Dalangin, was filed on October 1, 2002.

[15] Petitioner's Memorandum, pp. 15-16; rollo, pp. 126-127. Original in upper case.

[16] *Borromeo v. Sun*, 375 Phil. 595, October 22, 1999.

[17] *People v. Cariquez*, 373 Phil. 877, September 27, 1999. To determine accident, the following three elements must concur: 1) the accused is performing a lawful act with due care; 2) the resulting injury is caused by mere accident; and 3) on the part of the accused, there is no fault or intent to cause the injury.

[18] TSN, July 29, 1994, pp. 22-40. (Emphasis supplied)

[19] CA Decision, pp. 16-17; rollo, pp. 64-65.

[20] Petition, pp. 25-26; rollo, pp. 33-34.

[21] *Supra*. See 161 Phil. 611, 617, February 27, 1976, *per curiam*.

[22] *Supra*.

[23] CA Decision, p. 18; rollo, p. 66.

[24] TSN, *supra*, pp. 30-31.

[25] *Id.*, p. 28. Underscoring and boldface supplied.

[26] Petition, pp. 27-28; rollo, pp. 35-36. Boldface in the original.

[27] *People v. Cariquez*, *supra*.

[28] In the assailed Decision, the appellate court -- while acknowledging the innate differences between "accident" and "self-defense," the former presupposing the lack of intention to inflict harm and the latter assuming voluntariness induced by necessity -- nevertheless submits that the standards to be used in determining

whether the elements of one or the other are extant are one and the same.

The Court disagrees. It is apparent from their varying definitions under the Revised Penal Code that “accident” and “self-defense” are two different circumstances. Accident, as an exempting circumstance, presupposes that while a crime may have been committed, no criminal is to be held liable. Section 4 of Article 12 describes “accident” as an exempting circumstance as follows:

“Article 12. Circumstances which are exempt from criminal liability: -- The following are exempt from criminal liability:

x x x x x x x x

(4) Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intent of causing it.”

x x x x x x x x

On the other hand, the justifying circumstance of self-defense presupposes that no crime has been committed for which a criminal can be held liable. It is apparent, from a reading of Section 3 of Article 11, that the law treats the justifying circumstance of “self-defense” as a totally different circumstance with another set of elements, as follows:

“Article 11. Justifying circumstances. – The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.”

x x x x x x x x

With their differing elements, one cannot, as the appellate court erroneously did, utilize the standards used in proving “self-defense” to prove whether or not under the same facts, “accident” is extant.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.