RAMONITO MANABAN, PETITIONER, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. NO. 150723. July 11, 2006

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] of the Decision[2] dated 21 May 2001 and the Resolution[3] dated 8 November 2001 of the Court of Appeals in CA-G.R. CR No. 23790. In its 21 May 2001 Decision, the Court of Appeals affirmed the Decision of the Regional Trial Court of Quezon City, Branch 219 ("trial court"), finding Ramonito Manaban ("Manaban") guilty of the crime of homicide. In its 8 November 2001 Resolution, the Court of Appeals modified its Decision by reducing the award for loss of earning capacity.

The Facts

The facts as narrated by the trial court are as follows:

> On October 11, 1996, at around 1:25 o'clock in the morning, Joselito Bautista, a father and a member of the UP Police Force, took his daughter, Frinzi, who complained of difficulty in breathing, to the UP Health Center. There, the doctors prescribed certain medicines to be purchased. Needing money therefore, Joselito Bautista, who had taken alcoholic drinks earlier, proceeded to the BPI Kalayaan Branch to withdraw some money from its Automated Teller Machine (ATM).
>
> Upon arrival at the bank, Bautista proceeded to the ATM booth but because he could not effectively withdraw money, he started kicking and pounding on the machine. For said reason, the bank security guard, Ramonito Manaban, approached and asked him what the problem was. Bautista complained that his ATM was retrieved by the machine and that no money came out of it. After Manaban had checked the receipt, he informed Bautista that the Personal Identification Number (PIN) entered was wrong and advised him to just return the next morning. This angered Bautista all the more and resumed pounding on the machine. Manaban then urged him to calm down and referred him to their customer service over the phone. Still not mollified, Bautista continued raging and striking the machine. When Manaban could no longer pacify him, he fired a warning shot. That diverted the attention of Bautista. Instead of venting his ire against the machine, he confronted Manaban. After some exchange of words, a shot rang out fatally hitting Bautista.[4]

On 24 October 1996, Manaban was charged with the crime of murder. The Information states:

> That on or about the 11th day of October 1996, in Quezon City, Philippines, the above-named accused, armed with a gun, and with intent to kill, qualified by treachery, did then and there wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one JOSELITO BAUTISTA, by then and there, shooting him at the back portion of his body, thereby inflicting upon said JOSELITO BAUTISTA mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of the said JOSELITO BAUTISTA.[5]

When arraigned on 4 December 1996,[6] Manaban pleaded not guilty to the offense charged. Trial then followed.

The Trial
The Prosecution's Version

The prosecution presented six witnesses: (1) Faustino Delariarte ("Delariarte"); (2) SPO1 Dominador Salvador ("SPO1 Salvador"); (3) Rodolfo Bilgera ("Bilgera"); (4) Celedonia H. Tan ("Tan"); (5) Dr. Eduardo T. Vargas ("Dr. Vargas"); and (6) Editha Bautista ("Editha").

Delariarte was a security guard who was employed by the same security agency as Manaban. Delariarte testified that in the early morning of 11 October 1996, their duty officer, Diosdado Morga, called him and informed him that one of the guards stationed at the BPI Kalayaan Branch ("BPI Kalayaan") was involved in a shooting incident. When he arrived at the bank, Delariarte saw Manaban inside the bank using the phone. He also saw Joselito Bautista ("Bautista") lying on the ground but still alive. He then told their company driver, Virgilio Cancisio ("Cancisio"), to take Bautista to the hospital but to be careful since there was a gun tucked in Bautista's waist. Bautista allegedly reeked of alcohol. Delariarte further testified that when Manaban came out of the bank, Manaban admitted to Delariarte that he shot Bautista.[7]

SPO1 Salvador was a police investigator assigned at Station 10, Philippine National Police-Central Police District Command (PNP-CPDC) of Quezon City. SPO1 Salvador testified that on 11 October 1996, about 2:05 a.m., the duty desk officer SPO2 Redemption Negre sent him, SPO1 Jerry Abad and SPO1 Ruben Reyes to BPI Kalayaan to investigate an alleged shooting incident. SPO1 Salvador testified that when they arrived at BPI Kalayaan, they were met by Delariarte and Cancisio. Manaban then approached them and surrendered his service firearm, a .38 caliber revolver, to SPO1 Salvador. Manaban allegedly admitted shooting Bautista. SPO1 Salvador and his team investigated the crime scene. According to SPO1 Salvador, he saw Bautista lying on his back near the Automated Teller Machine ("ATM"). A .38 caliber revolver inside a locked holster was tucked in Bautista's right waist. SPO1 Salvador noticed that Bautista, who was still breathing, had been shot in the back. They brought Bautista to the East Avenue Medical Center where Bautista later died. Thereafter, they proceeded to the police station and turned over Manaban to their desk officer for proper disposition and investigation.[8]

Dr. Vargas, National Bureau of Investigation (NBI) Medico-Legal Officer, conducted an autopsy on Bautista's cadaver. Dr. Vargas testified that Bautista died of a gunshot wound. According to him, the point of entry of the bullet was at the back, on the right side of the body and there was no exit point. He stated that he was able to recover the slug from the left anterior portion of the victim's body and that he later submitted the slug to the NBI Ballistics Division. Dr. Vargas further stated that the bullet wound was fatal because the bullet hit the right lung and lacerated parts of the liver, stomach and the pancreas. Based on the location of the gunshot wound, Dr. Vargas deduced that the assailant must have been behind the victim, on the right side, when he shot the victim.[9] Dr. Vargas also testified that the absence of signs of near-fire indicates that the distance between the muzzle of the gun and the point of entry was more than 24 inches. During cross-examination, Dr. Vargas testified that he was able to take blood samples from the victim which, based on the NBI Chemistry Division analysis, tested positive for alcohol.[10] Dr. Vargas issued a certificate of post-mortem examination[11] and an autopsy report.[12]

Bilgera was a ballistician at the Firearms Investigation Division (FID) of the NBI. Bilgera testified that upon receiving a letter-request dated 11 October 1996 from PNP Police Inspector Percival Fontanilla, he conducted a ballistic examination on the following specimens submitted to him:

- One (1) ARMSCOR 2015, Caliber .38 Revolver, SN-28909 marked "DBS";

- One (1) ARMSCOR 200, Caliber .38 Revolver, SN-P03471 marked "DBS";

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- One (1) Caliber .38 one badly deformed copper coated lead bullet marked "RM";

- Two (2) Caliber .38 empty shells marked "RM-1" and "RM-2";

- One (1) Caliber .38 misfired ammunition marked "RM-3";

- Nine (9) Caliber .38 ammunition marked "RM-4", "RM-5", "RM-6" and "JB-1" to "JB-6"; and

- One (1) Caliber .38 deformed copper coated lead bullet marked "JB". (Re-FID No. 606-14-1096 [N-96-2047]).[13]

Based on the examination, Bilgera concluded that the bullet which was extracted from Bautista's body by the medico-legal officer was fired from the ARMSCOR 2015 .38 Caliber revolver with Serial No. 28909[14] and that the empty shells also came from the same gun. Bilgera submitted a written report[15] on the result of his examination.

Editha, the widow of Joselito Bautista, testified that she was married to Bautista on 22 December 1993 in civil rites and that they have four children, the eldest of whom was 13 years old. Editha stated that her husband, who was a member of the University of the Philippines Police Force ("UP Police Force") since 1985, was receiving a monthly salary of P5,050 at the time of his death. She narrated that on 11 October 1996, about 1:25 a.m., her husband brought their daughter Frinzi who had an asthma attack to the UP Health Center where she was confined for three days. According to Editha, her husband then left to withdraw money at BPI Kalayaan for the purchase of medicines. Later, she was fetched by members of the UP Police Force who informed her that her husband had been shot. Editha claimed that as a consequence of her husband's death, she spent more than P111,000[16] for the nine-day wake, embalmment and funeral services.[17]

The prosecution and the defense agreed to dispense with the testimony of Tan, the Assistant Manager of BPI Kalayaan. Instead, they just agreed to stipulate that on 11 October 1996, about 7:45 a.m., Tan and BPI Custodian Elma R. Piñano retrieved BPI Express Teller Card No. 3085-2616-21 issued to Bautista which was captured by the ATM because a wrong Personal Identification Number (PIN) was entered.[18]

The Defense's Version

The defense presented four witnesses: (1) Manaban; (2) Renz Javelona ("Javelona"); (3) Tan; and (4) Patrick Peralta ("Peralta").

Manaban, the accused, testified that he was employed by Eagle Star Security Agency as a security guard and was assigned at BPI Kalayaan. On 10 October 1996, he was on duty from 7:00 p.m. until 7:00 a.m. the following day.

Manaban narrated that on 11 October 1996, about 1:40 a.m., Bautista tried to withdraw money from the ATM. Manaban then saw Bautista pounding and kicking the ATM. When Manaban asked Bautista what was the problem, Bautista replied that no money came out from the machine. According to Manaban, Bautista appeared to be intoxicated.

Manaban looked at the receipt issued to Bautista and saw that the receipt indicated that a wrong PIN was entered. Manaban informed Bautista that the ATM captured Bautista's ATM card because he entered the wrong PIN. He then advised Bautista to return the following day when the staff in charge of servicing the ATM would be around.

Bautista replied that he needed the money very badly and then resumed pounding on the ATM. Manaban tried to stop Bautista and called by telephone the ATM service personnel to pacify Bautista. Bautista talked to the ATM service personnel and Manaban heard him shouting invectives and saw him pounding and kicking the ATM again.

When Manaban failed to pacify Bautista, Manaban fired a warning shot in the air. Bautista then faced him and

told him not to block his way because he needed the money very badly. Bautista allegedly raised his shirt and showed his gun which was tucked in his waist. Manaban stepped back and told Bautista not to draw his gun, otherwise he would shoot.

However, Bautista allegedly kept on moving toward Manaban, who again warned Bautista not to come near him or he would be forced to shoot him. Bautista suddenly turned his back and was allegedly about to draw his gun. Fearing that he would be shot first, Manaban pulled the trigger and shot Bautista.

Manaban recounted that he then went inside the bank and called the police and his agency to report the incident. While he was inside the bank, a fellow security guard arrived and asked what happened. Manaban answered, "wala yan, lasing."

Later, a mobile patrol car arrived. Manaban related the incident to the police officer and informed him that Bautista was still alive and had a gun. Manaban then surrendered his service firearm to the police officer. According to Manaban, he fired his gun twice – once in the air as a warning shot and the second time at Bautista who was about four meters from him.[19]

On cross-examination, Manaban further explained that after he fired the warning shot, Bautista kept coming toward him. Manaban pointed his gun at Bautista and warned him not to come closer. When Bautista turned his back, Manaban thought Bautista was about to draw his gun when he placed his right hand on his waist. Fearing for his life, he pulled the trigger and shot Manaban. According to Manaban, "[n]oong makita ko siya na pabalikwas siya, na sadya bubunot ng baril, sa takot ko na baka maunahan niya ako at mapatay, doon ko na rin nakalabit yung gatilyo ng baril." Manaban declared that it did not occur to him to simply disable the victim for fear that Bautista would shoot him first.[20]

Javelona was an ATM Service Assistant of BPI. Javelona testified that on 11 October 1996, between 1:30 a.m. and 2:00 a.m., she received a call from a client at BPI Kalayaan. The client, who was later identified as Bautista, complained: "Nagwi-withdraw ako dito sa ATM Kalayaan. Mali daw yung PIN ko, alam ko tama yung PIN ko. Ilang beses ko nang ginamit, mali pa rin. Kailangan kong mag-withdraw."

Javelona tried to placate Bautista and advised him not to insert his card anymore because it might be captured by the machine and to try again later in the morning. Bautista allegedly answered angrily: "Na capture na nga, eh! Tama na nga yung PIN number [sic]. Hindi ako pwedeng hindi makakuha ng pera. Kailangan kong bumili ng gamot para sa anak ko. Hindi ko naman kasalanan ito." Javelona replied: "Sir, hindi ho natin makukuha ang card ninyo ngayon kasi ang makaka-open lang ho ng ATM machine ay ang officer ng Kalayaan Branch. Even if makuha natin ang card ninyo ngayon, hindi pa ninyo magagamit ngayon. Magagamit lang ninyo as soon as mag-pa-encode kayo ng PIN number [sic]."

Bautista then reiterated angrily his dire need to withdraw money for the medicine of his daughter. Javelona apologized to Bautista and informed him that there was really nothing she could do at that time. She also advised Bautista to go back to the bank at 9:00 a.m. to get his ATM card and also to withdraw money over the counter. Bautista refused to be pacified and started cursing so Javelona decided to hang up the phone.[21]

Tan, the Assistant Manager of BPI Kalayaan, testified that when she reported for work in the morning of 11 October 1996, she discovered that the ATM was out of order. According to Tan, the ATM keyboard was not properly mounted and the keys were damaged. Also, the telephone beside the ATM was hung up. Tan then called Peralta, the technician, to have the ATM repaired. When Peralta opened the ATM, they found Bautista's ATM card which was captured by the machine.[22]

Peralta, a Customer Engineer Specialist, testified that on 11 October 1996, BPI Kalayaan sought his assistance

regarding their ATM. When Peralta arrived at BPI Kalayaan, he talked to Tan and then proceeded to the ATM to assess the damage. According to Peralta, the ATM keyboard was damaged and mis-aligned.[23]

The Trial Court's Ruling

On 14 April 1999, the trial court rendered judgment, the dispositive portion of which reads:

> WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of Homicide, the Court hereby sentences the accused to suffer the penalty of imprisonment ranging from FOUR (4) YEARS and TWO (2) MONTHS of Prision Correccional, as minimum, to EIGHT (8) YEARS and ONE (1) DAY of Pris[i]on Mayor, as maximum; to pay indemnity to the heirs of Joselito Bautista for his death in the amount of P75,000.00; and actual damages in the amount of P111,324.00 for the nine-day wake, embalm[ing] and funeral services, and P1,418,040.00 for the loss of Bautista's earning capacity, the last to be paid by installment at least P3,030.00 a month until fully paid with the balance earning interest at the rate of six percent (6%) per annum; and to pay the costs.
>
> SO ORDERED.[24]

The trial court held that the defense failed to establish self-defense as a justifying circumstance. According to the trial court, unlawful aggression, which is the most essential element to support the theory of self-defense, was lacking in this case. The trial court found that, contrary to Manaban's claim, Bautista was not about to draw his gun to shoot Manaban. Evidence show that Bautista's gun was still tucked in his waist inside a locked holster. Furthermore, the trial court held that Bautista could not have surprised Manaban with a preemptive attack because Manaban himself testified that he already had his gun pointed at Bautista when they were facing each other. The trial court likewise rejected Manaban's claim of exemption from criminal liability because he acted under the impulse of an uncontrollable fear of an equal or greater injury. The trial court held that the requisites for the exempting circumstance of uncontrollable fear under paragraph 6, Article 12 of the Revised Penal Code are not present in this case. However, the trial court credited Manaban with two mitigating circumstances: voluntary surrender and obfuscation.

The Court of Appeals' Ruling

On appeal, the Court of Appeals affirmed the trial court's decision. The Court of Appeals later reconsidered and modified its decision with respect only to the award of loss of earning capacity. Using the formula 2/3 [80 – age at the time of death] x [gross annual income – 80% gross annual income], the Court of Appeals recomputed the award for loss of earning capacity. In its Resolution dated 8 November 2001, the Court of Appeals reduced the award for the loss of the victim's earning capacity from P1,418,040 to P436,320.

The Issues

In his petition for review, Manaban submits that:

- The Respondent Court gravely erred in affirming the erroneous factual appreciation and interpretation by the trial court a quo in practically affirming the decision of the latter court which are based on a clear misappreciation of facts and findings grounded entirely on speculations, surmises or conjectures "in a way probably not in accord with law or with the applicable jurisprudence of the Supreme Court."

- The Respondent Court gravely erred in ignoring petitioner's self-defense on the sole fact that the entrance of the deceased victim's wound was from the back.

- The Respondent Court gravely erred in concluding that petitioner failed to establish unlawful aggression just because the holster of the victim was still in a lock position.

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- Granting arguendo that petitioner made a mistake in his appreciation that there was an attempt on the part of the deceased victim to draw his gun who executed "bumalikwas," such mistake of fact is deemed justified.

- Finally, the Respondent Court gravely erred in awarding exorbitant and baseless award of damages to the heirs of deceased victim.[25]

The Court's Ruling

The petition is partly meritorious.

An appeal in a criminal case opens the entire case for review. The reviewing tribunal can correct errors though unassigned in the appeal, or reverse the lower court's decision on grounds other than those the parties raised as errors.[26]

Unlawful Aggression is an Indispensable Requisite of Self-Defense

When the accused invokes self-defense, he in effect admits killing the victim and the burden is shifted to him to prove that he killed the victim to save his life.[27] The accused must establish by clear and convincing evidence that all the requisites of self-defense are present.[28]

Under paragraph 1, Article 11 of the Revised Penal Code, the three requisites to prove self-defense as a justifying circumstance which may exempt an accused from criminal liability are: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) lack of sufficient provocation on the part of the accused or the person defending himself.[29] Unlawful aggression is an indispensable requisite of self-defense.[30] Self-defense is founded on the necessity on the part of the person being attacked to prevent or repel the unlawful aggression.[31] Thus, without prior unlawful and unprovoked attack by the victim, there can be no complete or incomplete self-defense.[32]

Unlawful aggression is an actual physical assault or at least a threat to attack or inflict physical injury upon a person.[33] A mere threatening or intimidating attitude is not considered unlawful aggression,[34] unless the threat is offensive and menacing, manifestly showing the wrongful intent to cause injury.[35] There must be an actual, sudden, unexpected attack or imminent danger thereof, which puts the defendant's life in real peril.[36]

In this case, there was no unlawful aggression on the part of the victim. First, Bautista was shot at the back as evidenced by the point of entry of the bullet. Second, when Bautista was shot, his gun was still inside a locked holster and tucked in his right waist. Third, when Bautista turned his back at Manaban, Manaban was already pointing his service firearm at Bautista. These circumstances clearly belie Manaban's claim of unlawful aggression on Bautista's part. Manaban testified:

> ATTY. ANCANAN
>
> Q:
>
> You said the victim showed his gun by raising his shirt?
>
> A:
>
> Yes, sir.
>
> Q:
>
> The victim never drew his gun?
>
> A:

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He was about to draw the gun when he turned around.

Q:

My question is when the victim was facing you, the victim never drew his gun?

A:

Not yet, sir.

Q:

And when you told the victim not to come close, he did not come closer anymore?

A:

He walked towards me, sir.

Q:

For how many steps?

A:

I cannot remember how many steps.

Q:

And according to you, while he was facing you and walking towards you he suddenly turned his back to you, is that correct?

A:

Bumalikwas po at parang bubunot ng baril.

Q:

Let us get the meaning of "bumalikwas", tumalikod sa iyo?

A:

Bumalikwas po (witness demonstrating).

Q:

Will you please demonstrate to us how the victim "bumalikwas"?

A:

When he was facing me and I told him, "Sir, you just be there otherwise I am going to take the gun" and at that moment, he, the victim turned his back and simultaneously drew the gun.

Q:

When he was facing you, the victim never drew his gun, is that correct?

A:

Not yet, sir.

Q:

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And according to you, it was at that point when he turned his back on you that he tried to draw his gun?

A:

Yes, sir.

Q:

You said that he tried to draw, but the fact is he merely placed his hand on his waist?

A:

No, sir, when I saw him, when he was hit, I saw him, the hand was already on the gun but still tucked on his waist (witness places his hand on his right waist with fingers open).

Q:

And it was at that precise moment while the victim's back was turned on you that you fired your shot?

A:

When he was about to turn his back and it seems about to take his gun, that is the time I shot him because of my fear that he would be ahead in pulling his gun and he might kill me.

Q:

When you said, when you fired your shot, the victim's gun was still tucked in his right waist, is that correct?

A:

Yes, sir, his hand was on his waist.

Q:

You just answer the question. Was the victim's gun still tucked on his waistline?

A:

Yes, sir.

Q:

And his hand was merely placed on his hips. The victim's right hand was merely placed on his right hip?

ATTY. CARAANG

I object. The witness testified that he was about to draw his gun.

COURT

He is asking the question so he has to answer.

A:

No, sir, the gun was on his waist.

ATTY. ANCANAN

Q:

At the precise time that you fired your second shot, you could have aimed your gun at the extremities of the

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victim, meaning legs or arms, is that correct?

A:

When I saw him that he was about to draw his gun because of my fear that he would get ahead of me and he would kill me, I did not mind anymore, I just inunahan ko siya.

ATTY. CARAANG

May I request that the answer of the witness be quoted as is?

A:

Noong makita ko siya na pabalikwas siya, na sabay bubunot ng baril, sa takot ko na baka maunahan niya ako at mapatay, doon ko na rin nakalabit yung gatilyo ng baril ko.

ATTY. ANCANAN

Q:

Mr. Witness, how long have you been a security guard before this incident?

A:

Around 7 months, sir.

Q:

Now, before you were employed as security guard by the Eagle Star Security Agency, did you undergo any training as a security guard?

A:

Yes, sir.

Q:

Where?
Camp Crame, sir.

A:

Q:

For how long?

A:

Three (3) days, sir.

Q:

And what did you learn from those 3 days training as security guard?

A:

Our duties as security guard were lectured to us, sir.

Q:

Now, were you not taught during the training that in any given situation, your first duty is to disable first an

aggressor?

ATTY. CARAANG

Objection, your Honor, I think that is no longer material besides, that is not part of my direct examination.

COURT

Witness may answer.

A:

It was taught to us, sir, but it depends on my situation. If the person kept on doing what I told him not to do and it would reach a point that it would endanger my life, of course even if you were in my place, you would do the same thing, so nakipagsabayan na ako, sir.

Q:

But in this particular case when you fired your second shot, the victim's back was towards you, is that not correct?

ATTY. CARAANG

Objection, already answered, your Honor.

COURT

Witness may answer.

A:

No, sir, I shot him only once, not twice.

Q:

Please answer the question. When you fired your second shot . . .

A:

Bumalikwas ho 'yon eh.

Q:

Please answer the question.

A:

Yes, sir.

Q:

And because his back was towards you, you could have easily disabled him by firing at his leg or at his arms, is that not correct?

ATTY. CARAANG

I object, your Honor, it was already answered. He said he was not given the opportunity to have a second thought and at that moment he was able to pull the trigger of his gun.

ATTY. ANCANAN

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> The witness already admitted that when he fired his gun, the victim's back was towards the witness, so my last question is just a follow-up.
>
> ATTY. CARAANG
>
> But the witness testified that he was not given the opportunity to have a second thought, that is why right then and there, he pulled the trigger of his gun.
>
> COURT
>
> Objection noted, witness may answer.
>
> A:
>
> What I was thinking at that time, was just to disarm him but when he turned, bumalikwas, and I saw that he was going to draw a firearm and that was when I decided to "makipagsabayan."
>
> x x x x x x x x x
>
> RE-DIRECT EXAMINATION
>
> ATTY. CARAANG
>
> Q:
>
> Mr. Witness, when you and the victim were facing each other, the gun was already pointed to him, is it not? Your gun?
>
> A:
>
> Yes, sir, I pointed my gun at him.[37]

The allegation of Manaban that Bautista was about to draw his gun when he turned his back at Manaban is mere speculation. Besides, Manaban was already aiming his loaded firearm at Bautista when the latter turned his back. In that situation, it was Bautista whose life was in danger considering that Manaban, who had already fired a warning shot, was pointing his firearm at Bautista. Bautista, who was a policeman, would have realized this danger to his life and would not have attempted to draw his gun which was still inside a locked holster tucked in his waist. Furthermore, if Manaban really feared that Bautista was about to draw his gun to shoot him, Manaban could have easily disabled Bautista by shooting his arm or leg considering that Manaban's firearm was already aimed at Bautista.

Aggression presupposes that the person attacked must face a real threat to his life and the peril sought to be avoided is imminent and actual, not imaginary.[38] Absent such actual or imminent peril to one's life or limb, there is nothing to repel and there is no justification for taking the life or inflicting injuries on another.[39]

Voluntary Surrender and Obfuscation

The trial court credited Manaban with two mitigating circumstances: voluntary surrender and obfuscation.

It is undisputed that Manaban called the police to report the shooting incident. When the police arrived, Manaban surrendered his service firearm and voluntarily went with the police to the police station for investigation. Thus, Manaban is entitled to the benefit of the mitigating circumstance of voluntary surrender.

On obfuscation, we find that the facts of the case do not entitle Manaban to such mitigating circumstance. Under paragraph 6, Article 13 of the Revised Penal Code, the mitigating circumstance of passion and obfuscation is appreciated where the accused acted upon an impulse so powerful as naturally to have produced passion or

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obfuscation. The requisites of the mitigating circumstance of passion or obfuscation are: (1) that there should be an act both unlawful and sufficient to produce such condition of mind; and (2) that the act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity.[40]

In his testimony, Manaban admitted shooting Bautista because Bautista turned around and was allegedly about to draw his gun to shoot Manaban. The act of Bautista in turning around is not unlawful and sufficient cause for Manaban to lose his reason and shoot Bautista. That Manaban interpreted such act of Bautista as preparatory to drawing his gun to shoot Manaban does not make Bautista's act unlawful. The threat was only in the mind of Manaban and is mere speculation which is not sufficient to produce obfuscation which is mitigating.[41] Besides, the threat or danger was not grave or serious considering that Manaban had the advantage over Bautista because Manaban was already pointing his firearm at Bautista when the latter turned his back. The defense failed to establish by clear and convincing evidence the cause that allegedly produced obfuscation.

Award of Damages

The records[42] reveal that Bautista was 36 years old at the time of his death and not 26 years old as stated by the trial court and the Court of Appeals.[43] Moreover, the annual salary of Bautista at the time of his death was already P60,864 and not P60,600.[44] We likewise modify the formula applied by the Court of Appeals in the computation of the award for loss of earning capacity. In accordance with current jurisprudence,[45] the formula for the indemnification for loss of earning capacity is:

Net Earning
Capacity

=

Life Expectancy x

[Gross Annual
Income (GAI)

–Living Expenses]

=

2/3(80 – age of deceased) x (GAI – 50% of GAI)

Using this formula, the indemnification for loss of earning capacity should be:

Net Earning
Capacity

=

2/3 (80 – 36) x [P60,864 – (50% x P60,864)]

=

29.33 x P30,432

=

P892,570.56

With regard to actual damages, the records show that not all the expenses that the Bautista family allegedly

incurred were supported by competent evidence. Editha failed to present receipts or any other competent proof for food expenses and rental fee for jeeps for the funeral. Editha merely submitted a typewritten "Summary of Food Expenses & Others."[46] A mere list of expenses, without any official receipts or any other evidence obtainable, does not to prove actual expenses incurred.[47] Competent proof of the actual expenses must be presented to justify an award for actual damages.[48] In this case, only the following expenses were duly supported by official receipts and other proof :

- Embalming fee[49] P11,000

- Bronze Casket[50] 25,000

- Cadillac Hearse fee[51] 3,500

- Funeral Services[52] 30,000

Total P69,500

Thus, we reduce the actual damages granted from P111,324 to P69,500.

We likewise reduce the indemnity for death from P75,000 to P50,000 in accordance with prevailing jurisprudence.[53]

WHEREFORE, we AFFIRM with MODIFICATION the Decision of the Court of Appeals dated 21 May 2001 and its Resolution dated 8 November 2001. We find petitioner Ramonito Manaban guilty beyond reasonable doubt of the crime of Homicide. Applying the Indeterminate Sentence Law and taking into account the mitigating circumstance of voluntary surrender, Ramonito Manaban is hereby sentenced to suffer an indeterminate penalty ranging from six years and one day of prision mayor as minimum to 12 years and one day of reclusion temporal as maximum. Ramonito Manaban is ordered to pay the heirs of Joselito Bautista: P892,570.56 as indemnity for loss of earning capacity; P69,500 as actual damages; and P50,000 as indemnity for death.

SO ORDERED.

Quisumbing, (Chairman), Carpio-Morales, Tinga, and Velasco, Jr. JJ., concur.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Fermin A. Martin, Jr. and Mercedes Gozo-Dadole, concurring.

[3] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Martin S. Villarama, Jr. and Mercedes Gozo-Dadole, concurring.

[4] Rollo, p. 47.

[5] CA rollo, p. 12; Records, p. 1.

[6] The trial court Decision erroneously stated that the arraignment was on 5 December 1996. However, the Certificate of Arraignment, Minutes, and Order of the trial court show that Manaban was arraigned on 4 December 1996. Records, pp. 28-30.

[7] TSN, 27 January 1998.

[8] Rollo, pp. 48-49; TSN, 5 and 19 May 1997.

[9] TSN, 7 August 1997.

[10] TSN, 13 November 1997.

[11] Exh. "X," records, p. 173.

[12] Exh. "Y," records, p. 174.

[13] Records, p. 167.

[14] This was the service firearm confiscated from Manaban.

[15] FID Report No. 603-11-1096, dated 15 October 1996. Records, pp. 167-168.

[16] Editha submitted a list of expenses incurred with a total of P111,324. Exh. "LL," records, p. 187.

[17] See Exhs. "II," "JJ," "KK," and "LL," records, pp. 184-187.

[18] TSN, 10 June 1997, pp. 44-46. See certification letter of Tan and Piñano, dated 14 October 1996, addressed to the State Investigation and Intelligence Division of the Philippine National Police in Quezon City, records, p. 164.

[19] TSN, 29 July 1998, pp. 5-24.

[20] Id. at 25-42.

[21] TSN, 14 October 1998.

[22] TSN, 18 November 1998.

[23] TSN, 21 October 1998.

[24] Rollo, p. 56. Records, p. 319.

[25] Rollo, pp. 11-12.

[26] People v. Jubail, G.R. No. 143718, 19 May 2004, 428 SCRA 478.

[27] Senoja v. People, G.R. No. 160341, 19 October 2004, 440 SCRA 695; People v. Gadia, 418 Phil. 30 (2001).

[28] People v. Gallego, 453 Phil. 825 (2003).

[29] Catalina Security Agency v. Gonzales-Decano, G.R. No. 149039, 27 May 2004, 429 SCRA 628; People v. Pansensoy, 437 Phil. 499 (2002).

[30] People v. Gallego, supra note 28.

[31] People v. Gadia, 418 Phil. 30 (2001).

[32] People v. Gallego, supra.

[33] People v. Catbagan, G.R. Nos. 149430-32, 23 February 2004, 423 SCRA 535.

[34] Toledo v. People, G.R. No. 158057, 24 September 2004, 439 SCRA 94.

[35] People v. Catbagan, supra.

[36] Cabuslay v. People, G.R. No. 129875, 30 September 2005, 471 SCRA 241; People v. Escarlos, G.R. No. 148912, 10 September 2003, 410 SCRA 463; Roca v. Court of Appeals, G.R. No. 114917, 29 January 2001, 350

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SCRA 414.

[37] TSN, 29 July 1998, pp. 28-41, 46 (Emphasis supplied).

[38] People v. Damitan, 423 Phil. 113 (2001).

[39] Senoja v. People, supra note 27.

[40] People v. Pansensoy, supra note 29.

[41] People v. Malejana, G.R. No. 145002, 24 January 2006.

[42] See Certificate of Identification of Dead Body (Exh. "U"), records, p. 196; Certificate of Post-Mortem Examination (Exh. "X"), records, p. 199; Autopsy Report No. N-96-2047 (Exh. "Y"), records, p. 200.

[43] It was the accused, Ramonito Manaban, who was 26 years old at the time of the shooting incident.

[44] See Service Record of Bautista (Exh. "HH"), records, p. 183. The mistake may be due to the testimony of Editha that Bautista was receiving a monthly salary of P5,050 (or an annual salary of P60,600) at the time of his death.

[45] Pleyto v. Lomboy, G.R. No. 148737, 16 June 2004, 432 SCRA 329; People v. Agudez, G.R. Nos. 138386-87, 20 May 2004, 428 SCRA 692; Tugade, Sr. v. Court of Appeals, 455 Phil. 258 (2003).

[46] Exh. "LL," records, p. 187.

[47] See People v. Agudez, supra.

[48] Pleyto v. Lomboy, supra.

[49] Exh. "II," records, p. 184.

[50] Exh. "JJ," records, p. 185.

[51] Id.

[52] Exh. "KK," records, p. 186.

[53] People v. Quirol, G.R. No. 149259, 20 October 2005, 473 SCRA 509; People v. Catbagan, supra note 33; People v. Daniela, 449 Phil. 547 (2003); People v. Escote, Jr., 448 Phil. 749 (2003); People v. Dungca, 428 Phil. 682 (2002).

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