

SPO2 LOLITO T. NACNAC, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 191913. March 21, 2012

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

Every circumstance favoring the accused's innocence must be duly taken into account. The proof against the accused must survive the test of reason. Strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the accused could be laid the responsibility for the offense charged. If the prosecution fails to discharge the burden, then it is not only the accused's right to be freed; it is, even more, the court's constitutional duty to acquit him.[1]

This treats of the Motion for Reconsideration of Our Resolution dated August 25, 2010, affirming the July 20, 2009 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 30907 entitled *People of the Philippines v. SPO2 Lolito T. Nacnac*. The CA affirmed the May 23, 2007 Judgment[3] in Criminal Case No. 10750-14 of the Regional Trial Court (RTC), Branch 14 in Laoag City, which convicted petitioner of homicide.

The Facts

An Information charged the accused as follows:

That on or about February 20, 2003, in Dingras, Ilocos Norte, and within the jurisdiction of this Honorable Court, accused SPO2 Lolito I. Nacnac, a public officer, being then a member of the Philippine National Police, assigned with the Dingras Police Station, Dingras, Ilocos Norte, did then and there willfully, unlawfully and feloniously, with intent to kill, shoot one SPO1 Doddie Espejo with a gun resulting into the latter's death.[4]

A reverse trial ensued upon the claim of self-defense by the accused. As summarized by CA,[5] the shooting incident happened as follows:

The victim, SPO1 Doddie Espejo[,] had a history of violent aggression and drunkenness. He once attacked a former superior, P/Insp. Laurel Gayya, for no apparent reason. On the day of his death, he visited a cock house for merriment. He was shot by accused-appellant [petitioner] on February 20, 2003 at around 10:00 p.m. at the Dingras Police Station, Dingras, Ilocos Norte.

On that fateful night of February 20, 2003, accused-appellant, the victim and a number of other police officers were on duty. Their shift started at 8:00 in the morning of the same day, to end at 8:00 the next morning. Accused-appellant, being the highest ranking officer during the shift, was designated the officer-of-the-day. Shortly before 10:00 in the evening, the victim, together with then SPO1 Eduardo Basilio, took the patrol tricycle from the station grounds. When accused-appellant saw this, he stopped the victim and his colleague from using the tricycle. The victim told accused-appellant that he (the victim) needed it to go to Laoag City to settle a previous disagreement with a security of a local bar.

Accused-appellant still refused. He told the victim that he is needed at the station and, at any rate, he should stay at the station because he was drunk. This was not received well by the victim. He told accused-appellant in Ilocano: "Iyot ni inam kapi" (Coitus of your mother, cousin!). The victim alighted from the tricycle. SPO1

Eduardo Basilio did the same, went inside the office, and left the accused-appellant and the victim alone. The victim took a few steps and drew his .45 caliber gun which was tucked in a holster on the right side of his chest. Accused-appellant then fired his M-16 armalite upward as a warning shot. Undaunted, the victim still drew his gun. Accused-appellant then shot the victim on the head, which caused the latter's instantaneous death. Accused-appellant later surrendered to the station's Chief of Police.

The RTC Ruling

The RTC found the accused guilty of the crime charged. The RTC held that the claim of self-defense by the accused was unavailing due to the absence of unlawful aggression on the part of the victim. The dispositive portion of the RTC Judgment reads:

WHEREFORE, the accused SPO2 Lolito Nacnac is found GUILTY beyond reasonable doubt of the crime of homicide. Taking into account the mitigating circumstance of voluntary surrender, the Court hereby sentences him to an indeterminate penalty ranging from EIGHT YEARS of prison mayor as minimum to FOURTEEN YEARS of reclusion temporal as maximum. He is also ordered to pay the heirs of the deceased (1) P50,000.00 as indemnity for his death, (2) P100,000.00 as actual damages, (3) P50,000.00 as moral damages, and (4) P20,000.00 as attorney's fees. Costs against the accused.[6]

The CA Ruling

On appeal, the CA affirmed the findings of the RTC. It held that the essential and primary element of unlawful aggression was lacking. It gave credence to the finding of the trial court that no one else saw the victim drawing his weapon and pointing it at accused Senior Police Officer 2 (SPO2) Lolito T. Nacnac. The fallo of the CA Decision reads:

WHEREFORE, the instant appeal is DISMISSED for lack of merit and the challenged Judgment dated May 23, 2007 in Criminal Case No. 10750-14 is AFFIRMED IN TOTO.[7]

On August 25, 2010, this Court issued a Resolution, denying Nacnac's petition for review for failure to sufficiently show that the CA committed any reversible error in the challenged decision and resolution as to warrant the exercise of this Court's appellate jurisdiction.

On October 11, 2010, petitioner filed a Motion for Reconsideration of this Court's Resolution dated August 25, 2010. On March 21, 2012, this Court granted the Motion and reinstated the petition. Petitioner raises the following issues:

1. [Whether the CA erroneously held that] the victim's drawing of his handgun or pointing it at the petitioner is not sufficient to constitute unlawful aggression based on existing jurisprudence.
2. [Whether the CA incorrectly appreciated the photo] showing the victim holding his handgun in a peculiar manner despite the fact that no expert witness was presented to testify thereto x x x.
3. [Whether petitioner] has met the second and third requisites of self-defense x x x.[8]

Petitioner argues that he did not receive a just and fair judgment based on the following: (1) the trial court did not resort to expert testimony and wrongly interpreted a photograph; (2) the trial court ignored the evidence proving unlawful aggression by the victim; (3) the trial court ignored the two gun reports and two empty shells found at the crime scene which support the claim that petitioner fired a warning shot; and (4) the trial court failed to appreciate petitioner's act of self-defense. Petitioner also claims that the CA gravely erred in not giving proper weight and due consideration to the Comment of the Office of the Solicitor General (OSG).

In its Comment[9] dated April 27, 2011, the OSG avers that petitioner is entitled to an acquittal, or at the very

least, not one but two mitigating circumstances.

Our Ruling

We revisit Our ruling in the instant case.

The Revised Penal Code provides the requisites for a valid self-defense claim:

ART. 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.

Unlawful Aggression

Unlawful aggression is an indispensable element of self-defense. We explained, “Without unlawful aggression, self-defense will not have a leg to stand on and this justifying circumstance cannot and will not be appreciated, even if the other elements are present.”[10] It would “presuppose an actual, sudden and unexpected attack or imminent danger on the life and limb of a person—not a mere threatening or intimidating attitude—but most importantly, at the time the defensive action was taken against the aggressor. x x x There is aggression in contemplation of the law only when the one attacked faces real and immediate threat to one’s life. The peril sought to be avoided must be imminent and actual, not just speculative.”[11]

As We held:

Even the cocking of a rifle without aiming the firearm at any particular target is not sufficient to conclude that one’s life was in imminent danger. Hence, a threat, even if made with a weapon, or the belief that a person was about to be attacked, is not sufficient. It is necessary that the intent be ostensibly revealed by an act of aggression or by some external acts showing the commencement of actual and material unlawful aggression.[12]

The following exchange showing actual and material unlawful aggression transpired during the examination of petitioner:[13]

Atty. Lazo:

At any rate, when you again prevented them from getting the tricycle telling them again that they should not get the tricycle, what happened next?

Accused:

When police officer Basilio alighted from the tricycle SPO1 Espejo also alighted sir.

Q

What did Doddie Espejo do when he alighted from the tricycle?

A

I saw him hold his firearm tucked on his right waist. (witness demonstrating by placing his right hand at his right sideways). And he was left handed, sir.

Q

And what happened next?

A

When I saw him holding his firearm that was the time I fired a warning shot, sir.

Q

And when you fired [a] warning shot, what happened next?

A

He drew his firearm, sir.

Q

When he drew his firearm, what did you do?

A

When he drew his firearm I shot him [on] his head once, sir.

x x x x

Atty. Cajigal:

Q

By the way, what kind of firearm did the victim draw from his waist?

A

Cal. 45, sir.

Q

What firearm did you use in defending yourself?

A

M-16 armalite, sir.

x x x x

Q

Alright, you mean to tell the Honorable Court then that at the time that you pointed or squeezed the trigger of your gun the cal. 45 was already pointed at you?

A

Yes, sir.

Q

Did you ever observe if he squeezed the trigger but the gun [was] already pointed at you?

A

He just pointed his firearm at me, sir.

Q

Who first pointed his firearm, the victim pointed his firearm at you before you pointed your firearm at him?

A

The victim, sir.

Q

In short, it was the victim whose gun was first pointed at you?

A

Yes, sir.

Q

And that was the time when you raised your armalite and also pointed the same at him is that right?

A

Yes, that was the time that I shot him, sir. (Emphasis supplied.)

According to the trial court, petitioner's claim that the victim pointed his gun at petitioner was a mere afterthought. It ruled that petitioner's sworn statement and direct testimony as well as the testimonies of SPO1 Eduardo Basilio and SPO2 Roosevelt Ballesteros only established that the victim drew his gun. The trial court went on to differentiate the act of drawing a gun and pointing it at a target. It held that the mere act of drawing a gun cannot be considered unlawful aggression. In denying petitioner's motion for reconsideration, the CA affirmed the trial court's findings and further held that petitioner had fuller control of his physical and mental faculties in view of the victim's drunken state. It concluded that the likelihood of the victim committing unlawful aggression in "his inebriated state" was "very slim." [14]

We disagree. The characterization as a mere afterthought of petitioner's testimony on the presence of unlawful aggression is not supported by the records.

The following circumstances negate a conviction for the killing of the victim:

(1)

The drunken state of the victim;

(2)

The victim was also a police officer who was professionally trained at shooting;

(3)

The warning shot fired by petitioner was ignored by the victim;

(4)

A lawful order by petitioner was ignored by the victim; and

(5)

The victim was known for his combative and drunken behavior.

As testified by the victim's companion, SPO1 Basilio, petitioner ordered him and the victim not to leave because they were on duty. SPO1 Basilio also confirmed that the victim was inebriated and had uttered invectives in

response to petitioner's lawful order.[15]

Ordinarily, as pointed out by the lower court, there is a difference between the act of drawing one's gun and the act of pointing one's gun at a target. The former cannot be said to be unlawful aggression on the part of the victim. In *People v. Borreros*,^[16] We ruled that "for unlawful aggression to be attendant, there must be a real danger to life or personal safety. Unlawful aggression requires an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude x x x. Here, the act of the [deceased] of allegedly drawing a gun from his waist cannot be categorized as unlawful aggression. Such act did not put in real peril the life or personal safety of appellant."

The facts surrounding the instant case must, however, be differentiated from current jurisprudence on unlawful aggression. The victim here was a trained police officer. He was inebriated and had disobeyed a lawful order in order to settle a score with someone using a police vehicle. A warning shot fired by a fellow police officer, his superior, was left unheeded as he reached for his own firearm and pointed it at petitioner. Petitioner was, therefore, justified in defending himself from an inebriated and disobedient colleague. Even if We were to disbelieve the claim that the victim pointed his firearm at petitioner, there would still be a finding of unlawful aggression on the part of the victim. We quote with approval the OSG's argument^[17] on this point:

A police officer is trained to shoot quickly and accurately. A police officer cannot earn his badge unless he can prove to his trainers that he can shoot out of the holster quickly and accurately x x x. Given this factual backdrop, there is reasonable basis to presume that the appellant indeed felt his life was actually threatened. Facing an armed police officer like himself, who at that time, was standing a mere five meters from the appellant, the [latter] knew that he has to be quick on the draw. It is worth emphasizing that the victim, being a policeman himself, is presumed to be quick in firing.

Hence, it now becomes reasonably certain that in this specific case, it would have been fatal for the appellant to have waited for SPO1 Espejo to point his gun before the appellant fires back.

Reasonable Means Employed

To successfully invoke self-defense, another requisite is that the means employed by the accused must be reasonably commensurate to the nature and the extent of the attack sought to be averted.^[18]

Supporting petitioner's claim of self-defense is the lone gunshot wound suffered by the victim. The nature and number of wounds inflicted by the accused are constantly and unremittingly considered as important indicia.^[19] In *People v. Catbagan*,^[20] We aptly held:

The means employed by the person invoking self-defense is reasonable if equivalent to the means of attack used by the original aggressor. Whether or not the means of self-defense is reasonable depends upon the nature or quality of the weapon, the physical condition, the character, the size and other circumstances of the aggressor; as well as those of the person who invokes self-defense; and also the place and the occasion of the assault.

In the instant case, the lone wound inflicted on the victim supports the argument that petitioner feared for his life and only shot the victim to defend himself. The lone gunshot was a reasonable means chosen by petitioner in defending himself in view of the proximity of the armed victim, his drunken state, disobedience of an unlawful order, and failure to stand down despite a warning shot.

Lack of Sufficient Provocation

The last requisite for self-defense to be appreciated is lack of sufficient provocation on the part of the person defending himself or herself. As gleaned from the findings of the trial court, petitioner gave the victim a lawful

order and fired a warning shot before shooting the armed and drunk victim. Absent from the shooting incident was any evidence on petitioner sufficiently provoking the victim prior to the shooting.

All told, We are convinced that petitioner was only defending himself on the night he shot his fellow police officer. The rule is that factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal.[21] This rule is binding except where the trial court has overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance.[22] As earlier pointed out, the trial court did not consider certain facts and circumstances that materially affect the outcome of the instant case. We must, therefore, acquit petitioner.

Given the peculiar circumstances of this case, We find that the prosecution was unable to establish beyond reasonable doubt the guilt of petitioner. Even the OSG shares this view in its Comment appealing for his acquittal.

WHEREFORE, petitioner's Motion for Reconsideration is GRANTED. The CA Decision dated July 20, 2009 in CA-G.R. CR-H.C. No. 30907 is REVERSED and SET ASIDE. Petitioner SPO2 Lolito T. Nacnac is ACQUITTED of homicide on reasonable doubt.

The Director of the Bureau of Prisons is ordered to immediately RELEASE petitioner from custody, unless he is being held for some other lawful cause, and to INFORM this Court within five (5) days from receipt of this Decision of the date petitioner was actually released from confinement.

SO ORDERED.

Peralta, Abad, Mendoza, and Perlas-Bernabe, JJ., concur.

[1] *People v. Muleta*, G.R. No. 130189, June 25, 1999, 309 SCRA 148, 175-176; citing *People v. Mejia*, G.R. Nos. 118940-41, July 7, 1997, 275 SCRA 127, 155. (Emphasis supplied.)

[2] Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Arturo G. Tayag.

[3] Penned by Presiding Judge Francisco R.D. Quilala.

[4] *Rollo*, p. 45.

[5] *Id.* at 47.

[6] *Id.* at 192.

[7] *Id.* at 58.

[8] *Id.* at 20-21.

[9] *Id.* at 322-332.

[10] *Palaganas v. People*, G.R. No. 165483, September 12, 2006, 501 SCRA 533, 552.

[11] *People v. Dagani*, G.R. No. 153875, August 16, 2006, 499 SCRA 64, 74.

[12] *People v. Rubiso*, G.R. No. 128871, March 18, 2003, 399 SCRA 267, 273-274.

[13] *Rollo*, pp. 143-145, 150.

[14] *Id.* at 63.

[15] *Id.* at 132.

[16] G.R. No. 125185, May 5, 1999, 306 SCRA 680, 690.

[17] Rollo, p. 262.

[18] *People v. Escarlos*, G.R. No. 148912, September 10, 2003, 410 SCRA 463, 479.

[19] *People v. Rabanal*, G.R. No. 146687, August 22, 2002, 387 SCRA 685, 695.

[20] G.R. Nos. 149430-32, February 23, 2004, 423 SCRA 535, 557-558.

[21] *People v. Jubail*, G.R. No. 143718, May 19, 2004, 428 SCRA 478, 495.

[22] *People v. Lotoc*, G.R. No. 132166, May 19, 1999, 307 SCRA 471, 480.

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