

**NORBERTO MASIPEQUIÑA, AND JOVENCIO ALAMPAYAN,
PETITIONERS, VS. HONORABLE COURT OF APPEALS AND THE
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

G.R. No. 51206. August 25, 1989

Ponente: CORTES, J.

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CORTES, J.:

The extent to which responding peace officers may defend themselves in the face of an attack by the person sought to be apprehended is the subject of this petition for review.

Petitioners Patrolmen Norberto Masipequiña and Jovencio Alampayan, who were members of the Integrated National Police (INP) of San Isidro, Bohol, were charged with the crime of homicide for the death of Leopoldo Potane. They were convicted by the trial court and sentenced to suffer imprisonment of from seven (7) years and one (1) day of prision mayor as minimum to fourteen (14) years, four (4) months and one (1) day of reclusion temporal as maximum, and to jointly and severally indemnify the heirs of the deceased Leopoldo Potane in the amount of twelve thousand pesos (P12,000.00).

On appeal, the Solicitor General joined the petitioners in their prayer for acquittal on the theory that petitioners are exempt from liability because they had acted in self-defense when they shot and killed Leopoldo Potane. But, just the same, the Court of Appeals affirmed the judgment of the trial court, but modified the penalty of imprisonment to eight (8) years and one (1) day of prision mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum.

Before this Court both the petitioners and the Solicitor General reassert that petitioners should be acquitted because they acted in lawful self-defense.

There is no dispute about the following facts, which were quoted by the Court of Appeals from the Solicitor General's presentation.

* * *

In the afternoon of December 21, 1976, Barangay Capt. Nicolas Potane of Barrio Abehilan, San Isidro, Bohol and his father, Pedro Potane requested assistance from the Police Sub-station Commander of San Isidro in apprehending Leopoldo Potane, son of Pedro Potane and elder brother of Nicolas, who has begun to show signs of recurring insanity. Since his arrival from Mindanao in 1974, Leopoldo had been acting queerly and at times violent. On December 18, 1975, Leopoldo chased the wife of Nicolas with a bolo and almost hacked her. He always carried a bolo, and had threatened his own wife, daughter, brothers, and even his parents with death. Fearing for their safety, they transferred temporarily to the Home Economics building of the barrio school and left Leopoldo alone in the house of his father. Nicolas Potane and his immediate relatives wanted Leopoldo to be examined and treated by the Provincial Health Officer for his mental ailment (pp. 19-22, 26-32, t.s.n., Nov. 15, 1976; Exhs. C, C-1 to C-5-A, Folder of Exhibits).

Patrolmen Norberto Masipequiña and Jovencio Alampayan, the former armed with a .38 cal. revolver and the latter with the Thompson submachine gun, were ordered by the sub-station commander to arrest Leopoldo. Before proceeding to the house where Leopoldo was, the policemen passed the store of a certain Ismael Balumia where they had a conference with Barrio Captain Nicolas Potane; his father, Pedro Potane; his mother, Margarita Potane and others. In said store a joint affidavit (Exhs. D, D-1 and D-2, Folder of Exhibits), was prepared and signed by Nicolas Potane, Pedro Potane, Margarita Potane, Clara Potane, Francisca Potane, and Emilia Potane, wife of Leopoldo, authorizing the 'peace officer' of the San Isidro Police Dept. 'to apprehend Leopoldo Potane who was about to run amok.' The document further stated that if Leopoldo would resist as he is armed with a weapon, the policemen 'have the right to shoot him but not to kill him x x x but if such does not permit, if he resist(s) arrest they have the right to resort to any manner to prevent the fearful outcome from his running amok' and 'if he would be killed by the police officers on account of his resistance, we, the parents, brother and sisters, and wife would take no action if something untoward would occur.' (pp. 4-8, t.s.n., Dec. 7, 1976).

Thereafter, the two policemen, accompanied by several persons, among whom was Nicolas Potane, went to the house of Pedro Potane where Leopoldo was. Upon arrival thereat, Pat. Masipequiña, a childhood friend of Leopoldo, called Leopoldo and urged him to come out. He also asked Leopoldo for a drink, but Leopoldo refused to go down the house. Pat. Masipequiña then informed Leopoldo that his father and brother had reported that he (Leopoldo) had chased his sister-in-law with a bolo and their officer-in-charge sent him to investigate the report. He told Leopoldo to come down so that they could talk. Leopoldo instead told him to come up (pp. 10-11, t.s.n., *ibid*).

Pat. Masipequiña went up the house followed by Nicolas Potane with a petromax lamp. Patrolman Jovencio Alampayan and the rest stayed in the yard. Although in the yard, Patrolman Alampayan could see what was going on inside the house because it was a single storey house and had an elevation of only 4 feet (p. 56, t.s.n., Dec. 6, 1976). Nicolas stayed on the door landing while Masipequiña entered the sala and was about to sit down on a rocking chair when Leopoldo suddenly emerged from an adjacent room and rushed at him swinging a bolo. Masipequiña pushed the rocking chair towards Leopoldo. Leopoldo hit Masipequiña on the bridge of the nose (p. 23, t.s.n., *ibid*). As the latter retracted, he lost his balance and was hit on the right side of his face. At this juncture, Masipequiña drew his revolver and fired three shots. One shot misfired but the other two hit Leopoldo on the chest. Leopoldo continued to advance towards him. He pushed the rocking chair at Leopoldo and ran out of the house shouting for help. Leopoldo ran after him. Pat. Masipequiña jumped from the house and landed on the ground. In the process he hit his shin on a piece of stone. Leopoldo also jumped to the ground and continued to pursue Masipequiña. As Leopoldo poised to hack Pat. Masipequiña, Pat. Alampayan fired his gun hitting Leopoldo once at the thigh (pp. 25-26, *id.*, pp. 40, 71, t.s.n., Dec. 6, 1976).

* * *

[CA Decision, pp. 2-4; Rollo, pp. 9-11.]

Leopoldo Potane died some thirty (30) minutes later while being brought to the health center for treatment.

The issue is readily apparent: whether or not, given the undisputed facts, petitioner Masipequiña had acted in lawful self-defense. (Petitioner Alampayan's conviction for the crime charged hinges on that of Masipequiña as the trial court had found that the two conspired to kill Leopoldo Potane, as alleged in the information.)

The trial court, however, rejected the defense raised by petitioner. The following reasons, which were cited by the trial court, were adopted and quoted with approval by the Court of Appeals:

. . . (1) the fact that the accused persisted in their attempts to arrest and/or pick up the victim for almost two (2) hours, culminating in the tragedy at around nine o'clock that evening; (2) the fact that the victim suffered three gunshot wounds, two of which were over the heart and admittedly fatal, and the third on the left thigh which was not fatal but sufficient to cripple him; (3) the fact that all three gunshot wounds bore evidence of

gunpowder signs, which is indicative and conclusive of having been inflicted at close range; (4) the fact that the victim had a 2-inch lacerated wound on his forehead and another lacerated wound on his right leg which have not been sufficiently explained but are also indicative of having been inflicted by blunt instruments, like a flashlight or the butts of a revolver or a sub-machine gun; and (5) the fact that the alleged injuries of accused Masipequiña could not, by any stretch of imagination, be inflicted by a bolo allegedly wielded by the victim, since they are quite superficial in degree, located in the most improbable places and may even have been self-inflicted to justify a subsequent claim of self-defense.

* * *

[Rollo, p. 20.]

"The law on self-defense embodied in any penal system in the civilized world finds justification in man's natural instinct to protect, repel, and save his person and rights from impending danger and peril; it is based on that impulse of self-preservation born to man and part of his nature as a human being." [People v. Boholst-Caballero, G.R. No. L-23249, November 25, 1974, 61 SCRA 180, 185.] In our jurisdiction it is found in Article 11 of the Revised Penal Code which provides:

ART. 11. Justifying circumstances. ? The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided 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.

* * *

It is settled jurisprudence that he who invokes the exempting circumstance of self-defense must prove it during the trial [U.S. v. Coronel, 30 Phil. 112 (1915).] He must prove the elements enumerated in Article 11 by clear and convincing evidence, the reason being that since he had admitted having killed or wounded another, which is an act punishable by law, he shall be liable thereof unless he establishes a lawful defense [People v. Boholst-Caballero, supra.] Thus, the determination of whether or not all the three elements are present in the case.

1. That there was unlawful aggression on the part of the deceased Leopoldo Potane is evident from the established facts. Leopoldo Potane, who had showed signs of mental illness and had threatened his immediate relatives with a bolo, suddenly and without provocation attacked with a bolo Masipequiña, whom he (Leopoldo Potane) has asked to go inside the house.

2. That there was reasonable necessity of the means employed by Masipequiña to prevent or repel Leopoldo Potane's attack is also supported by the evidence.

In the leading case of U.S. v. Mojica, 42 Phil. 784 (1922), where a policeman trying to quell a disturbance shot with his revolver and fatally wounded a man who attacked him with a knife, the Court laid down the following rule:

A police officer, in the performance of his duty, must stand his ground and cannot, like a private individual, take refuge in flight; his duty requires him to overcome his opponent. The force which he may exert therefore differs somewhat from that which may ordinarily be offered in self-defense. Bearing this in mind, we do not think that the appellant in using his revolver against the deceased can be said to have employed unnecessary force. The deceased attacked him with a deadly weapon; he might, perhaps, have saved himself by running away, but this his duty forbade. Was he to allow himself to be stabbed before using his arms? It may, perhaps,

be argued that the appellant might have used his club, but a policeman's club is not a very effective weapon as against a drawn knife and a police officer is not required to afford a person attacking him the opportunity for a fair and equal struggle. (State vs. Phillips, 119 Iowa, 652; 67 L.R.A., 292; North Carolina vs. Gosnell, 74 Fed., 734; Boykin vs. People, 22 Colo., 496; 45 Pac., 419; Adams vs. State, 72 Ga., 85.) And if it was necessary for the appellant to use his revolver, he could hardly, under the circumstances, be expected to take deliberate and careful aim so as to strike a point less vulnerable than the body of his adversary. (U.S. vs. Mack, 8 Phil., 701; U.S. v. Domen, 37 Phil., 57.) [Id., p. 787.]

Tested by this standard, the means employed by Masipequiña in repelling the attack were, under the circumstances, both reasonable and necessary. He initially tried to defend himself by pushing the rocking chair toward Leopoldo Potane but when that proved futile and he (Masipequiña) was caught in a very precarious position, i.e., his back was on the floor and Leopoldo Potane kept flailing at him with the bolo, he had no other choice but to use his revolver to defend himself against the attack. Under the circumstances, there was no opportunity for Masipequiña to carefully take aim. He just discharged his weapon at the deceased in the hope that such would save him from any further injury or death.

It must also be borne in mind that the rule is that the reasonable necessity of the means employed to repel or prevent the attack depends upon the imminent danger of injury, not on the harm actually done to the accused [U.S. v. Paras, 9 Phil. 367 (1907).] Thus, that Masipequiña escaped serious injuries does not necessarily imply that the means he used to repel the attack were unreasonable and excessive. The fact remains that the act of Leopoldo Potane of attacking Masipequiña with a bolo was a very real danger to his life that the latter had to repel the best way he can. That the gunshot wounds he inflicted on Leopoldo Potane proved to be fatal does not make the means he employed any less reasonable under the circumstances.

3. Then, the lack of sufficient provocation on the part of Masipequiña is too plain to even doubt. He, together with Patrolman Alampayan had been tasked by his superior to apprehend Leopoldo Potane upon complaint of his own father and brother. Thus, petitioners herein, when they went to apprehend the deceased, were in the performance of their official duties as peace officers. And when they reached the house where Leopoldo Potane was hiding, Masipequiña tried to coax Leopoldo Potane into coming out of the house, but the latter would not. It was only when Leopoldo Potane asked Masipequiña, who was his childhood friend, to enter the house that he did, followed by Nicolas Potane. Masipequiña was about to take a seat, definitely a non-provocative act, when he was suddenly attacked by Leopoldo Potane with a bolo.

As consistently argued by the Solicitor General before the Court of Appeals and this Court, all the elements of self defense are present in the instant case:

. . . (a) [T]here was unlawful aggression on the part of the victim which was a real and imminent threat to the life of Pat. Masipequiña. The victim was brandishing a bolo which he did use in fact to hit the latter; (b) The use of his revolver to repel the aggression was a reasonable necessity. His life already exposed to danger in the face of a continuous assault, it is likely that had he not shot the victim, he would have been killed, considering the deranged mind of the aggressor. Moreover, after he shot the victim, he ran away to avoid being hit farther (sic), an act obviously inconsistent with a deliberate intent to kill; (c) Pat. Masipequiña did not provoke the victim into attacking him. In fact, before he went inside the house, he asked Leopoldo to come out to talk things over. He even asked for a drink. It was only when the victim himself asked Pat. Masipequiña to go up the house that the latter entered the sala.

* * *

[Manifestation and Motion In Lieu of Respondent People's Brief, p. 12; Rollo, p. 115.]

We also hasten to add that, as in the case of *People v. Boholst-Caballero*, supra, we accord special significance to

the wounds inflicted on the deceased in finding that the elements of self-defense had been established.

According to Dr. Julieta Melicor, who conducted the post-mortem examination on the body of the deceased, the trajectory of the two chest wounds indicate that the person who fired the shots was in a lying and lower position while the deceased was then standing [TSN, September 2, 1976, pp. 5-6, 10.] This corroborates petitioner Masipequiña's testimony that he had his back to the floor when he fired at the victim who was attacking him with a bolo. The fact that the wounds bore traces of gunpowder, indicating the proximity between the person who fired the shot and the deceased, also support Masipequiña's testimony.

After the elements of self-defense had been established to exculpate petitioners from the charge of homicide, the next question that arises, albeit only incidentally, is whether or not Alampayan could be separately convicted of the lesser offense of less serious or slight physical injuries for the gunshot wound he inflicted on Leopoldo Potane's thigh.

Again, we refer to Article 11 of the Revised Penal Code, which provides:

ART. 11. Justifying circumstances. - The following do not incur any criminal liability:

* * *

3. Anyone who acts in defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of this article are present and that the person defending be not induced by revenge, resentment, or other evil motive.

* * *

Thus, the elements of defense of stranger are: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) the person defending be not induced by revenge, resentment, or other evil motive.

1. In the instant case, that there was unlawful aggression on the part of Leopoldo Potane had been adequately established, as discussed earlier with regard to the circumstance of self-defense.

2. Then, that the means employed by Alampayan in trying to prevent Leopoldo Potane from further attacking Masipequiña with a bolo were reasonable is clearly evident, as Alampayan only shot at Leopoldo Potane's thigh to prevent him from further pursuing Masipequiña who was trying to escape Leopoldo Potane's attack.

3. Finally, that Alampayan was not motivated by any evil motive is shown by the fact that he, together with Masipequiña, only proceeded to the place where the incident happened to look for Leopoldo Potane because they had been ordered by their substation commander to apprehend Leopoldo Potane who had shown signs of mental derangement and had threatened his relatives with a bolo. In short, the two policemen were in the performance of their official and lawful duties.

This, the performance of duties, brings to fore another circumstance that would justify Alampayan's wounding of Leopoldo Potane, for the same Article 11 of the Revised Penal Code exempts from liability "[a]ny person who acts in the fulfillment of a duty or in the lawful exercise of a right or office" (Art. 11, para. 5.) Thus, in one case, the Court acquitted the accused police officers even if their acts constituted the crimes of discharge of firearm and lesiones graves and menos graves, inflicted upon persons facing criminal charges who were trying to resist arrest, because the accused officers were in the performance of their official duties [U.S. v. Resaba, 1 Phil. 311 (1902).]

Finally, the small lacerated wounds on Leopoldo Potane's forehead and right leg, which the trial court and the Court of Appeals found suspicious, can be explained by the fact that Leopoldo Potane dropped to the ground after

he was shot on the thigh by Alampayan. There is nothing on the record to support the conclusion that the wounds were inflicted by a flashlight or gun butt.

In fine, this Court, on the basis of the same facts found by the Court of Appeals, has arrived at a different conclusion. Principally, the Court of Appeals affirmed the trial court's decision after concluding that one of the elements of self-defense, i.e., reasonable necessity of the means employed to prevent or repel the attack, was lacking. However, after a careful consideration of the undisputed facts and the rule on self-defense by police officers enunciated in *Mojica*, this Court is convinced that said element had been established and that the Court of Appeals committed a reversible error when it rejected petitioners' defense and affirmed the trial court's judgment of conviction.

WHEREFORE, the petition is GRANTED and the decision of the Court of Appeals is hereby REVERSED. Petitioners Patrolmen Norberto Masipequiña and Jovencio Alampayan are ACQUITTED of the crime charged.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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