

THIRD DIVISION

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

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

DECISION

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 *prision 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.