

SECOND DIVISION

[G.R. NO. 168818, March 09, 2007]

NILO SABANG, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

TINGA, J.:

On January 17, 1997, in the midst of a drinking spree on the eve of the fiesta in Liloan, Ormoc City, an intoxicated Nicanor Butad uttered the ominous words "I will shoot you" to Randy Sabang, to the horror of young Sabang's father, Nilo, and the other onlookers. Within moments, Butad himself lay dead from four gunshot wounds on his body. Nilo Sabang, petitioner herein, who was charged with and later convicted for the homicide, admits to the killing of Butad, but claims that the shooting was accidental and done as a means of defending his son. An array of witnesses for the prosecution and the defense provides a competing set of particulars as to the shooting. Ultimately, the prosecution's version, supported by the physical evidence, stands out as the truth.

This much is admitted. At around 6:30 p.m. on that fateful night, petitioner and Butad were having drinks together with spouses Cruz and Andresa Villamor outside the store of Melania Sombilon in Sitio Landing, Barangay Liloan, Ormoc City.^[1] Butad, a civilian agent with the Philippine National Police, was then armed with a .38-caliber revolver which was tucked in his holster. In the midst of the drinking spree, Randy Sabang suddenly and unexpectedly appeared before the group. His appearance triggered a negative reaction from Butad, who then uttered the words "I will shoot you" to Randy Sabang.^[2]

Certain circumstances attaching to this evident threat are disputed, as are the events that consequently followed. What is certain is that shortly afterwards, Butad lay dead, having sustained four (4) gunshot wounds from his own revolver. Petitioner appears to have fled but voluntarily surrendered thereafter, turning over the revolver as he surrendered.^[3]

Photographs of Butad as he lay dead on the scene were presented in evidence,^[4] as was the official report on his autopsy, prepared by the City Health Office of Ormoc City. The autopsy report^[5] indicated the following findings:

GENERAL SURVEY:

Examined a fairly nourished/fairly developed male cadaver with approximate height of 165 cm & weight of 65 kg in state of rigor mortis.

FINDINGS:

1. Bullet wound 1.0 x 0.5 cm at anterior chest wall, 14 cm from midline, right, along 3rd intercostal space anterior axillary line penetrating thoracic cavity lacerating upper lobe of right lung.
2. Bullet wound 0.7 x 0.5 cm at 4th intercostal space mid-axillary line, right, penetrating thoracic cavity lacerating upper lobe of right lung.
3. Bullet wound 1.5 x 0.7 cm at distal 3rd lateral aspect of right arm injuring skin & muscles.
4. Bullet wound 0.7 cm x 0.7 cm at mid vertebral column fracturing spine of 8th thoracic vertebra.

CAUSE OF DEATH:

Hypovolemia 2° to multiple bullet wound.

During arraignment, petitioner pleaded innocence, but during the presentation of the evidence for the defense, he claimed to have acted in defense of a relative. Petitioner and four (4) other witnesses testified for the defense. The following facts were sought to be established by petitioner:

By the time Butad had joined what was to be his last drinking spree, he was already in a belligerent mood. Earlier that afternoon, he had been chasing after Ramil Perez when the latter demanded payment for a bet Butad had lost over a cockfight.^[6]

The chase was witnessed by Celso Pepito, who would testify for the defense.^[7] As to the shooting itself, testifying for the defense were petitioner himself, the storekeeper Sombilon, and an eyewitness, Laurito Caparoso, who was situated right across the road when the shooting occurred.

Sombilon testified that when Butad told Randy Sabang, "I will shoot you," the deceased already had his revolver aimed at Randy.^[8] At this point, Andresa Villamor, a niece of the deceased, told Butad, "Please don't[,] *tiyo*, he's the son of Nilo."^[9] Petitioner and Caparoso also testified that at that time, Butad had his revolver pointed at Randy.^[10] Petitioner claimed that he then grabbed the arm of Butad, attempting to twist it toward his body and away from his son. As they were grappling and the revolver was pointed towards the body of Butad, petitioner claimed he heard gunshots, and only after the shots were fired was he able to "take the gun" from Butad.^[11] Petitioner's account is substantially corroborated by Caparoso.^[12]

This version of the shooting, however, stands in sharp contrast to that presented by the prosecution.

Natividad Payud, an eyewitness to the incident, testified that while the group of the deceased Butad, petitioner, and the spouses Cruz and Andresa Villamor was having a drinking spree, Randy suddenly entered the scene. Butad, appearing surprised, thrust a glass of Tanduay near Randy's mouth and uttered the words, "I will shoot you." Payud is certain that at this point, Butad was not holding any gun.^[13] Andresa Villamor, another eyewitness to the incident, confirmed Payud's testimony that

Butad was holding a glass and not a gun when he uttered those words.^[14]

Petitioner reacted to Butad's statement saying, "Just try to shoot my child because I'll never fight for him because he is a spoiled brat."^[15] Andresa Villamor then chided Butad and said, "Do not say that *tiyo*[,] because it's [sic] the son of Nilo Sabang."^[16]

Unexpectedly, a person appeared on the scene and punched Butad causing the latter to fall down lying partially on his back. Petitioner, who was then sitting across Butad, stood up and pulled the gun tucked in Butad's waist. He pointed the gun at Butad and fired a shot at the latter's chest.^[17] Payud and Andresa Villamor both saw petitioner fire two (2) more shots near Butad's chest.^[18]

In a Judgment^[19] dated November 22, 1999, the trial court convicted petitioner principally on the strength of the testimony of Dr. Edilberto P. Calipayan, the physician who conducted the post mortem examination of Butad's body, to the effect that the absence of powder burns indicates that the gunshots were fired at a distance of more than 10 inches from the victim's body and not close range as claimed by petitioner.^[20]

The Court of Appeals affirmed petitioner's conviction in a Decision^[21] dated August 16, 2004 and denied reconsideration in a Resolution^[22] dated July 6, 2005.

In this Petition,^[23] petitioner prays for his acquittal contending that he acted in defense of his son, a justifying circumstance under Art. 11^[24] of the Revised Penal Code. He claims that Butad's act of aiming a gun at his son while uttering the words "I will shoot you" was an aggression of the most imminent kind which prompted him to try to wrestle the gun from Butad leading to the accidental firing of the fatal shots.

Petitioner theorizes that the fact that Butad was then fully clothed could have accounted for the absence of powder burns on Butad's body. He disputes the trial court's finding that the wounds would have looked oblique had the shots been fired during a struggle, claiming that round entrance wounds could likewise be produced in near contact fire.

He further avers that Payud was not really an eyewitness to the event, pointing to the testimony of Benjamin Mahusay that he and Payud were already out of Sitio Landing and were heading home when they heard the gunshots. Likewise, Andresa Villamor's testimony is allegedly confined to seeing Butad sprawled on the ground.

The Office of the Solicitor General insists on petitioner's conviction but asks that the award of moral damages be reduced from P100,000.00 to P50,000.00.^[25]

We shall first resolve the question of whether petitioner's insistence on the justifying circumstance of defense of relative deserves merit.

In order to successfully claim that he acted in defense of a relative, the accused must prove the concurrence of the following requisites: (1) unlawful aggression on

the part of the person killed or injured; (2) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) the person defending the relative had no part in provoking the assailant, should any provocation been given by the relative attacked.^[26] Unlawful aggression is a primary and indispensable requisite without which defense of relative, whether complete or otherwise, cannot be validly invoked.^[27]

It is well-settled in this jurisdiction that once an accused has admitted that he inflicted the fatal injuries on the deceased, it is incumbent upon him in order to avoid criminal liability, to prove the justifying circumstance claimed by him with clear, satisfactory and convincing evidence. He cannot rely on the weakness of the prosecution but on the strength of his own evidence, "for even if the evidence of the prosecution were weak it could not be disbelieved after the accused himself had admitted the killing." Thus, petitioner must establish with clear and convincing evidence that the killing was justified, and that he incurred no criminal liability therefor.^[28]

Unlawful aggression must be clearly established by the evidence. In this case, there is a divergence in the testimonies of the prosecution and defense witnesses as to whether Butad aimed a gun at petitioner's son as he uttered the words "I will shoot you." With this conflict emerges the question of whether petitioner sensed an imminent threat to his son's life. Payud unequivocally testified that petitioner even dismissed Butad's utterance saying, "Just try to shoot my child because I'll never fight for him because he is a spoiled brat."

This indicates to us that petitioner did not consider Butad's words a threat at all.

These circumstances led the trial court to conclude that there was no unlawful aggression on the part of Butad which could have precipitated petitioner's actions. This finding, affirmed by the Court of Appeals, is conclusive on the Court barring any showing of any arbitrariness or oversight of material facts that could change the result.^[29]

Furthermore, the presence of four (4) gunshot wounds on Butad's body negates the claim that the killing was justified but instead indicates a determined effort to kill him. Even assuming that it was Butad who initiated the attack, the fact that petitioner was able to wrest the gun from him signifies that the aggression which Butad had started already ceased. Petitioner became the unlawful aggressor when he continued to shoot Butad even as he already lay defenseless on the ground.^[30]

On this point, the defense's own witness, Caparoso, said in his Counter Affidavit^[31] and during direct examination that after the first shot was fired, he saw petitioner take possession of the gun as Butad released his hold of it. It was after petitioner already had the gun that Caparoso heard more gunshots.^[32] Even petitioner admitted that he had an easy time twisting the hand with which Butad was supposedly holding his revolver because the latter was already very drunk having started drinking before noon that day.^[33]

Another crucial point to consider is that the prosecution's theory is consistent with the physical evidence.