

## SECOND DIVISION

[ G.R. No. 158057, September 24, 2004 ]

**NOE TOLEDO Y TAMBOONG, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**CALLEJO, SR., J.:**

This is a petition for review of the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 23742 affirming on appeal, the Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Odiongan, Romblon, Branch 82, in Criminal Case No. OD-861, convicting the petitioner of homicide.

In an Information filed in the RTC of Romblon, the petitioner was charged with homicide allegedly committed as follows:

That on or about the 16th day of September 1995, at around 9:30 o'clock in the evening, in Barangay Libertad, municipality of Odiongan, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and stab with a bolo, one RICKY F. GUARTE, which causes (*sic*) his untimely death.

Contrary to law.<sup>[3]</sup>

In due course, the prosecution adduced evidence against the petitioner which was synthesized by the appellate court as follows:

On September 16, 1995, appellant went to a black-smith who made the design of his bolo. When he went home to Tuburan, Odiongan, Romblon late in the afternoon (TSN, September 4, 1998, p. 2), appellant saw the group of Lani Famero, Michael Fosana, Rex Cortez and Ricky Guarte drinking gin at the house of the Spouses Manuel and Eliza Guarte, Ricky's parents. Appellant's house is about five (5) meters away from the house of Spouses Guarte. Appellant requested the group of Ricky to refrain from making any noise. Thereupon, appellant proceeded inside his house and went to sleep (*ibid.*, p. 3). Around 9:00 p.m., Gerardo Faminia, Eliza Guarte's brother arrived at the Guarte house and asked for any left-over food (TSN, August 5, 1998, p. 3). Eliza prepared dinner for him and after Gerardo finished eating, he went home accompanied by Ricky (TSN, April 26, 1996, p. 5). Gerardo's home is about twelve (12) meters away from the Guarte home (TSN, February 17, 1997, p. 11). Minutes later, Ricky came back and together with Lani, Rex and Michael, went to sleep at the Guarte house. They had not laid down for long when they heard stones being hurled at the roof of the house. The stoning was made three (3) times (TSN, August 5, 1998, pp. 2-3). Ricky rose from bed and peeped

through a window. He saw appellant stoning their house. Ricky went out of the house and proceeded to appellant's house. Ricky asked appellant, his uncle, why he was stoning their house. Appellant did not answer but met Ricky at the doorstep of his (appellant's) house (TSN, April 26, 1996, p. 6; August 5, 1998, pp. 4-5) and, without any warning, stabbed Ricky on the abdomen with a bolo (TSN, August 5, 1998, p. 8). Eliza had followed his son Ricky and upon seeing that Ricky was stabbed, shouted for help (TSN, February 17, 1997, p. 13). Lani heard Eliza's cry for help and immediately rushed outside the house. Lani saw Ricky leaning on the ground and supporting his body with his hands. Lani helped Ricky stand up and brought him to the main road. Lani asked Ricky who stabbed him and Ricky replied that it was appellant who stabbed him. Then Docloy Cortez arrived at the scene on board his tricycle. Accordingly, Ricky was put on the tricycle and taken to the Romblon Provincial Hospital (TSN, January 19, 1998, pp. 4-6).

At the Romblon Provincial Hospital, Dr. Noralie Fetalvero operated on Ricky that very night. Ricky had sustained one (1) stab wound but due to massive blood loss, he died while being operated on (TSN, November 24, 1997, pp. 2, 6-7). Dr. Fetalvero issued a Medico-Legal Certificate showing the injuries sustained by Ricky, thus:

Stab wound, left chest with gastric & transverse colon evisceration measuring 6 cms. long, irregular-edged at 8<sup>th</sup> ICS, left penetrating (operative findings):

(1) abdominal cavity perforating the stomach (thru & thru) and the left lobe of the liver

(2) thoracic cavity thru the left dome of the diaphragm perforating the lower lobe of the left lung.

...

(Exhibit C)

The Certificate of Death issued by Dr. Fetalvero stated the cause of Ricky's death as:

**CAUSES OF DEATH:**

Immediate cause :	a. Cardiorespiratory Arrest
Antecedent cause :	b. Hypovolemic shock
Underlying cause :	c. Multiple thoraco-abdominal injury 2 <sup>o</sup> to stab wound

(Exhibit B)<sup>[4]</sup>

**The Evidence of the Petitioner**

The petitioner adduced evidence that at around 5:00 p.m. on September 16, 1995,

he was on his way home at Tuburan, Odiongan, Romblon. He saw his nephew, Ricky Guarte, and the latter's friends, Michael Fosana, Rex Cortez, and Lani Famero, about five meters away from his house, having a drinking spree. He ordered them not to make loud noises, and they obliged. He then went to his house, locked the door with a nail, and went to sleep. However, he was awakened at around 9:30 p.m. by loud noises coming from Ricky and his three companions. He peeped through the window grills of his house and admonished them not to make any loud noises. Ricky, who was then already inebriated, was incensed; he pulled out a *balisong*, pushed the door, and threatened to stab the petitioner. The petitioner pushed their sala set against the door to block the entry of Ricky, but the latter continued to push the door open with his hands and body. The petitioner ran to the upper portion of their house and got his bolo.<sup>[5]</sup> He returned to the door and pushed it with all his might using his left hand. He then pointed his bolo, which was in his right hand, towards Ricky. The bolo accidentally hit Ricky on the stomach, and the latter lost his balance and fell to the floor. The petitioner, thereafter, surrendered to the *barangay* captain at 11:00 a.m. on September 17, 1995.

After trial, the court rendered judgment finding the petitioner guilty as charged. The *fallo* of the decision reads:

**WHEREFORE**, premises considered, **NOE TOLEDO** is hereby found GUILTY beyond reasonable doubt of homicide with the mitigating circumstance of voluntary surrender and is meted the indeterminate penalty of from six (6) years and one (1) day of *prision mayor* minimum, as minimum, to twelve (12) years and one (1) day of *reclusion temporal* minimum, as maximum.

Accused is condemned to pay the amount of ₱50,000.00 as civil liability to the heirs of the victim.<sup>[6]</sup>

The trial court did not give credence and probative weight to the testimony of the petitioner that his bolo accidentally hit the victim on the stomach.

On appeal in the CA, the petitioner raised the following issue in his brief as appellant:

WHETHER OR NOT ACCUSED-APPELLANT CAN BE CRIMINALLY HELD  
LIABLE FOR THE ACCIDENTAL DEATH OF RICKY GUARTE<sup>[7]</sup>

Invoking Article 12, paragraph 4 of the Revised Penal Code, the petitioner claimed that he stabbed the victim by accident; hence, he is exempt from criminal liability for the death of the victim.

The CA rendered judgment affirming the assailed decision with modifications. The CA also denied the petitioner's motion for reconsideration thereof. The appellate court ruled that the petitioner failed to prove that he acted in self-defense.

Aggrieved, the petitioner filed the instant petition for review, contending that the CA erred in not finding that he acted in self-defense when he stabbed the victim by accident and prays that he be acquitted of the crime charged.

The sole issue in this case is whether or not the petitioner is guilty beyond

reasonable doubt of homicide based on the evidence on record.

The petitioner contends that the CA committed a reversible error when it affirmed the decision of the RTC convicting him of homicide, on its finding that he failed to prove that he acted in complete self-defense when the victim was hit by his bolo. The petitioner insists that he acted in complete self-defense when his bolo accidentally hit the victim on the stomach.

For its part, the Office of the Solicitor General asserts that the petitioner failed to prove self-defense with clear and convincing evidence. Hence, the decision of the CA affirming, on appeal, the decision of the RTC is correct.

The contention of the petitioner has no merit.

The petitioner testified that his bolo hit the victim accidentally. He asserted in the RTC and in the CA that he is exempt from criminal liability for the death of the victim under Article 12, paragraph 4 of the Revised Penal Code which reads:

4. Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it.

In his brief in the CA, the petitioner argued that:

In the case at bar, with all due respect, contrary to the findings of the lower court, it is our humble submission that the death of Ricky Guarte was merely a sad and unwanted result of an accident without fault or intention of causing it on the part of accused-appellant. We submit, there were clear and indubitable factual indicators overlooked by the lower court, bolstering the theory of the defense on accidental death.<sup>[8]</sup>

However, the petitioner changed gear, so to speak, and now alleges that he acted in self-defense when he stabbed the victim. As such, he contends, he is not criminally liable under Article 11, paragraph 1 of the Revised Penal Code which reads:

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.

The petitioner avers that he was able to prove the essential elements of complete self-defense, thus:

A close scrutiny of the records of the case would show that the petitioner acted in self-defense.

The essential requisites of self-defense are: (1) unlawful aggression on the part of the victim; (2) reasonable scrutiny of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself (People vs. Silvano, 350 SCRA 650)<sup>[9]</sup>

However, the petitioner also claims that his bolo accidentally hit the stomach of the victim.

It is a matter of law that when a party adopts a particular theory and the case is tried and decided upon that theory in the court below, he will not be permitted to change his theory on appeal. The case will be reviewed and decided on that theory and not approached and resolved from a different point of view. To permit a party to change his theory on appeal will be unfair to the adverse party.<sup>[10]</sup>

The petitioner is proscribed from changing in this Court, his theory of defense which he adopted in the trial court and foisted in the CA – by claiming that he stabbed and killed the victim in complete self-defense. The petitioner relied on Article 12, paragraph 4 of the Revised Penal Code in the trial and appellate courts, but adopted in this Court two divergent theories – (1) that he killed the victim to defend himself against his unlawful aggression; hence, is justified under Article 11, paragraph 1 of the Revised Penal Code; (2) that his bolo accidentally hit the victim and is, thus, exempt from criminal liability under Article 12, paragraph 4 of the Revised Penal Code.

It is an aberration for the petitioner to invoke the two defenses at the same time because the said defenses are intrinsically antithetical.<sup>[11]</sup> There is no such defense as accidental self-defense in the realm of criminal law.

Self-defense under Article 11, paragraph 1 of the Revised Penal Code necessarily implies a deliberate and positive overt act of the accused to prevent or repel an unlawful aggression of another with the use of reasonable means. The accused has freedom of action. He is aware of the consequences of his deliberate acts. The defense is based on necessity which is the supreme and irresistible master of men of all human affairs, and of the law. From necessity, and limited by it, proceeds the right of self-defense. The right begins when necessity does, and ends where it ends.<sup>[12]</sup> Although the accused, in fact, injures or kills the victim, however, his act is in accordance with law so much so that the accused is deemed not to have transgressed the law and is free from both criminal and civil liabilities.<sup>[13]</sup> On the other hand, the basis of exempting circumstances under Article 12 of the Revised Penal Code is the complete absence of intelligence, freedom of action, or intent, or the absence of negligence on the part of the accused.<sup>[14]</sup> The basis of the exemption in Article 12, paragraph 4 of the Revised Penal Code is lack of negligence and intent. The accused does not commit either an intentional or culpable felony. The accused commits a crime but there is no criminal liability because of the complete absence of any of the conditions which constitute free will or voluntariness of the act.<sup>[15]</sup> An accident is a fortuitous circumstance, event or happening; an event happening wholly or partly through human agency, an event which under the circumstances is unusual or unexpected by the person to whom it happens.<sup>[16]</sup>

Self-defense, under Article 11, paragraph 1, and accident, under Article 12,