

## FIRST DIVISION

[ G.R. No. 105830, January 15, 2002 ]

**ELADIO C. TANGAN, PETITIONER, VS. THE COURT OF APPEALS  
AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### R E S O L U T I O N

**YNARES-SANTIAGO, J.:**

On February 23, 2001, this Court rendered a Decision as follows:

**WHEREFORE**, the petition in G.R. No. 103613 is **DISMISSED**. The appealed decision subject of G.R. No. 105830 is **AFFIRMED** with the following **MODIFICATIONS**:

(1) Tangan is sentenced to suffer an indeterminate penalty of six (6) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, maximum, with all the accessory penalties.

(2) Tangan is ordered to pay the victim's heirs P50,000.00 as civil indemnity, P42,000.00 as funeral and burial expenses, P5,000.00 as attorney's fees, and P50,000.00 as moral damages,

**SO ORDERED.**

Petitioner Eladio C. Tangan filed a Motion for Reconsideration, invoking the rule that factual findings of the trial court and the Court of Appeals are binding on this Court. Thus, he argues that this Court erred in disregarding the mitigating circumstances which were appreciated by the lower courts and in raising the indeterminate penalty imposed on him from a maximum of two years and four months of *prision correccional* to a maximum of fourteen years, eight months and one day of *reclusion temporal*. This, he claims, exposed him to the "horrific reality" of being re-incarcerated after having been preventively confined for more than four years.<sup>[1]</sup>

It bears stressing that at no time during the trial of the case did petitioner raise self-defense. Nevertheless, the trial court and the Court of Appeals found the attendance of the mitigating circumstances of incomplete self-defense, sufficient provocation, and passion and obfuscation.

When petitioner appealed the decision, he threw open the whole case for review. It became the duty of this Court to correct any error as may be found in the appealed judgment, whether it was made the subject of assignment of errors or not.<sup>[2]</sup>

Thus, this Court reviewed the records of the case and found that the evidence fails to support or substantiate the lower court's findings and conclusions. Clearly, therefore, this case falls within the recognized exceptions to the rule that an appellate court will generally not disturb the assessment of the trial court on factual matters considering that the latter, as a trier of fact, is in a better position to appreciate the same.<sup>[3]</sup>

First of all, the physical evidence belies petitioner's version of the incident. As we clearly explained in our assailed Decision:

The medical examiner testified that the distance between the muzzle of the gun and the target was about 2 inches but definitely not more than 3 inches. Based on the point of exit and trajectory transit of the wound, the victim and the alleged assailant were facing each other when the shot was made and the position of the gun was almost perpendicular when fired. These findings disprove Tangan's claim of accidental shooting. A revolver is not prone to accidental firing because of the nature of its mechanism, unless it were uncocked, then considerable pressure had to be applied on the trigger to fire the revolver.<sup>[4]</sup>

Physical evidence is a mute but eloquent manifestation of truth, and it ranks high in the hierarchy of our trustworthy evidence.<sup>[5]</sup> For this reason, it is regarded as evidence of the highest order. It speaks more eloquently than a hundred witnesses.<sup>[6]</sup>

The physical evidence is amply corroborated by the eyewitness accounts of Rosalia dela Cruz and Mary Ann Borromeo to the effect that petitioner took a gun from his car and suddenly fired it at the deceased.<sup>[7]</sup>

Likewise, this Court found that the mitigating circumstances appreciated by the trial court are not present. Petitioner refutes this and insists on his version of the facts. However, the testimony of his witness, on which he heavily relies, suffers from material inconsistencies which render it unworthy of belief.

It was shown that defense witness Nelson Pante was 10 meters away when he saw the incident, and his line of vision was blocked by petitioner's car.<sup>[8]</sup> From that distance and vantage point, he could not have heard anything or have had an unobstructed view of the events. Sure enough, the details of his statement betray the falsity thereof. He testified that petitioner was hit on the eyebrow, while petitioner said he was hit on the jaw.<sup>[9]</sup> Pante was also unable to identify Manuel Miranda, the person whom he supposedly saw punch petitioner.<sup>[10]</sup>

All of these, and the incredibility of petitioner's account when compared with the physical evidence, belie self-defense. From the established facts, it can be plainly gleaned that there was no unlawful aggression on the part of the deceased. What merely transpired before petitioner's gun went off was a heated exchange of words between the protagonists. This does not qualify as unlawful aggression. Unlawful aggression presupposes an actual, sudden, and unexpected attack, or imminent danger thereof. The person defending himself must have been attacked with actual physical force or with actual use of weapon.<sup>[11]</sup>