

SECOND DIVISION

[G.R. No. 136844, August 01, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPO1
RODOLFO CONCEPCION Y PERALTA, ACCUSED-APPELLANT.**

D E C I S I O N

QUISUMBING, J.:

Appellant seeks the reversal of the decision^[1] of the Regional Trial Court of Tarlac, Branch 65, in Criminal Case No. 9776, finding him guilty of murder and sentencing him to *reclusion perpetua*.

On January 22, 1998, an information^[2] for murder was filed with the trial court charging him with murder allegedly committed as follows:

That on or about November 24, 1997 between 10:00 and 11:00 o'clock in the evening, in Brgy. Cut-Cut II, Municipality of Tarlac, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court the said accused, with intent to kill and with treachery, did then and there wilfully, unlawfully and feloniously shoot with his Armalite rifle Lorenzo Galang hitting him at the different parts of his body and as a result of which said Lorenzo Galang died instantly.

CONTRARY TO LAW.

Appellant pleaded not guilty to the charge, and thereafter trial commenced.

The prosecution relied mainly on the eyewitnesses Maximo Sison, Jr., an employee of Hacienda Luisita, and Arturo Yarte, a tricycle driver, both of Barangay Cut-cut II, Tarlac City. Other prosecution witnesses were Orlando Galang, brother of the victim Lorenzo Galang, and Concordia Galang, his mother.

Both MAXIMO SISON, JR. and ARTURO YARTE testified^[3] that between 10:00 and 11:00 in the evening of November 24, 1997, Lorenzo Galang, a resident of their barangay, got involved in a quarrel at the town plaza. He was brought to the barangay hall for questioning by Barangay Captain Remigio Capitli.

Shortly after, appellant Rodolfo Concepcion arrived and fired his rifle twice or thrice past the ears of Lorenzo, who was then sitting, but without injuring him. After that, however, appellant thrust the barrel of the gun against the abdomen of Lorenzo. Then there was an explosion. Lorenzo was shot in the thigh. At least three more shots were fired, hitting Lorenzo in the chest. According to Sison and Yarte, appellant shot Lorenzo deliberately. Lorenzo died instantly.

ORLANDO GALANG, the victim's brother, recalled that he arrived at the scene of the crime after Lorenzo was slain.^[4] According to him, his brother was not brought to the hospital.^[5] Orlando testified on the anguish he suffered for having lost his brother.^[6]

CONCORDIA GALANG, mother of the victim, testified that Lorenzo worked at the Hacienda Luisita and was earning P1,000 more or less a week.^[7] According to her, Lorenzo was 27 years old when he died. He was married and had two children.^[8] As a result of Lorenzo's death, the Galang's incurred expenses amounting to approximately half a million pesos.^[9] Concordia Galang presented a list of these expenses amounting to P257,259,^[10] but without supporting receipts.

In his defense, appellant RODOLFO CONCEPCION claimed that the shooting was only accidental. According to him, he was investigating Lorenzo for the latter's disorderly behavior at the town plaza when it happened. He said Lorenzo appeared drunk and unruly, and even verbally challenged him to fight. At this juncture, according to appellant, he fired two shots in the air, but Lorenzo grabbed the barrel of his gun. The gun accidentally fired and Lorenzo was hit.^[11]

Defense witnesses ESTELITA BALUYOT and MILAGROS VILLEGAS corroborated appellant's story. They said they witnessed the incident because they were among the bystanders who saw the event happen from the time Lorenzo was brought to the barangay hall for investigation until he was shot.

Estelita and Milagros testified that Lorenzo was seated while being questioned and pacified by appellant. Appellant was then standing. All of a sudden, according to the lady-witnesses, appellant fired two warning shots in the air. Lorenzo stood up and grabbed the barrel of the gun which was then pointed upwards. When it fired, Lorenzo was hit.^[12]

On November 10, 1998, the trial court rendered its decision finding appellant guilty of the crime of murder. Its *fallo* reads:

WHEREFORE, finding accused guilty beyond reasonable doubt of the crime of murder punished and defined by Article 248 in relation to RA 7659, accused is hereby sentenced to suffer an imprisonment of reclusion perpetua and to indemnify the heirs of the deceased in the amount of P50,000.00 for his loss of life; P120,000.00 as expected income; P100,000.00 as moral damages; and P10,000.00 as attorney's fees.^[13]

Seasonably, appellant filed his notice of appeal. In his brief, he makes but one assignment of error:

THE LOWER COURT GRAVELY ERRED IN NOT FINDING THAT THE INJURIES SUSTAINED BY THE DECEASED WERE UNINTENTIONALLY INFLICTED WHILE ACCUSED-APPELLANT WAS IN THE COURSE OF PERFORMING HIS LAWFUL DUTY AS A POLICE OFFICER.^[14]

The sole issue in this case is whether appellant is exempt from criminal liability. Under Article 12 (4) of the Revised Penal Code, among those

exempted from criminal liability is:

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

Well settled is the rule in criminal cases, that the prosecution has the burden of proof to establish the guilt of the accused.^[15] However, once the defendant admits the commission of the offense charged, but raises an exempting circumstance as a defense, the burden of proof is shifted to him. By invoking mere accident as a defense, appellant now has the burden of proving that he is entitled to that exempting circumstance under Article 12 (4) of the Code.

The existence of accident must be proved by the appellant to the satisfaction of the court. For this to be properly appreciated in appellant's favor, the following requisites must concur: (1) that the accused was performing a lawful act with due care; (2) that the injury is caused by mere accident; and (3) that there was no fault or intent on his part to cause the injury.^[16] Appellant must convincingly prove the presence of these elements in order to benefit from the exempting circumstance of accident. However, his defense utterly failed to discharge this burden. Thus, we find no reversible error in the judgment of the trial court.

By appellant's own testimony, the victim was unarmed. In contrast, appellant had an armalite and a handgun. It is highly inconceivable that an unarmed man could pose bodily harm to another who is heavily armed.

We note, that appellant's gun discharged several shots that hit vital parts of the victim's body. Was the discharge purely accidental? We don't think so. As observed by the trial court, recklessly appellant had put his finger on the trigger of his cocked and loaded rifle. In that state, with the slightest movement of his finger,^[17] the rifle would fire readily. And it did not just once but several fires.

Appellant claims that the victim Lorenzo, who was drunk at the time, was brought to the barangay hall for investigation. Lorenzo became unruly while being questioned, so appellant was constrained to fire two warning shots in the air to frighten him. However, the latter stood up and immediately grabbed the nozzle of the gun and pulled it towards him. The gun accidentally went off and hit Lorenzo in the body. To buttress his claim, appellant rationalizes that he could have killed Lorenzo immediately while creating trouble at the plaza, if that was indeed his intention. Since he did not, appellant posits that there was no intent on his part to kill Lorenzo.

But we note patent inconsistencies in his claims. He testified on query by the trial court that when he was pacifying the victim, his rifle was hanging on his shoulder on a swivel, with its barrel pointed to the floor. At that instance, the victim grabbed the barrel of the gun which accidentally fired.^[18] However, on direct examination by his defense counsel, he testified that the victim grabbed his rifle only after he had fired the two shots in the air.

His claims do not square with and could not overcome the testimony of prosecution witnesses on this score. Note that Maximo Sison, Jr., an

eyewitness, categorically declared that he saw appellant shoot the victim with an M-16 armalite. ^[19] On direct examination, Sison testified as follows:

Q: Earlier, you stated at the time you arrived at the barangay hall, Rodolfo Concepcion was eight (8) meters away from Lorenzo, at that time Rodolfo Concepcion shot Lorenzo Galang, how far is Rodolfo Concepcion from Lorenzo Galang?

A: He was near him because he approached him, sir. He was very near.

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Q: How many times did Rodolfo Concepcion shot (sic) Lorenzo Galang?

A: The first firing were two (2) shots, sir.

Q: Was Lorenzo Galang hit?

A: No sir.

Q: At the time Rodolfo Concepcion fired these two (2) shots, according to you, it was near his left ear?

A: Yes, sir.

Q: How far is the barrel from the ear of Lorenzo Galang when he fired those two shots? Will you indicate by pointing your left ear?

A: Less than a foot, sir.

Q: When you are referring to the barrel of the gun which was pointed at the left ear of Lorenzo, how far is the barrel of the gun from the ears of Lorenzo?

A: The barrel was "lampas tainga" so Lorenzo was not hit, sir.

Q: What happened after that?

A: He put down and thrust the barrel of the gun toward the stomach of Lorenzo Galang, sir.

Q: After Rodolfo Concepcion thrust the barrel of his gun towards the abdomen of Lorenzo Galang what else transpired?

A: Because he was hurt he tried to push the barrel of the gun, sir.

Q: What did Lorenzo Galang use in pushing the barrel when Rodolfo Concepcion thrust it towards the stomach?

A: He just pushed a little bit to remove the barrel of the gun from his abdomen, sir.

Q: After that what happened?

A: After pushing the barrel of the gun simultaneously the firing and hitting Lorenzo at his right thigh, sir.

Q: What did Lorenzo Galang do after he was hit on the right thigh?