

## FIRST DIVISION

[ G.R. No. 103613, February 23, 2001 ]

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

**G.R. NO. 105830**

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

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

At around 11:30 p.m. of December 1, 1984, Navy Captain Eladio C. Tangan was driving alone on Roxas Boulevard heading south. He had just come from Buendia Avenue on an intelligence operation. At the same time, Generoso Miranda, a 29-year old optometrist, was driving his car in the same direction along Roxas Boulevard with his uncle, Manuel Miranda, after coming from the Ramada Hotel. Generoso was moving ahead of Tangan. Suddenly, firecrackers were thrown in Generoso's way, causing him to swerve to the right and cut Tangan's path. Tangan blew his horn several times. Generoso slowed down to let Tangan pass. Tangan accelerated and overtook Generoso, but when he got in front, Tangan reduced speed. Generoso tried four or five times to overtake on the right lane but Tangan kept blocking his lane. As he approached Airport Road, Tangan slowed down to make a U-turn. Generoso passed him, pulled over and got out of the car with his uncle. Tangan also stopped his car and got out. As the Mirandas got near Tangan's car, Generoso loudly retorted, "*Putang ina mo, bakit mo ginigitgit ang sasakyan ko?*" Generoso and Tangan then exchanged expletives. Tangan pointed his hand to Generoso and the latter slapped it, saying, "*Huwag mo akong dinuduro! Sino ka ba, ano ba ang pinagmamalaki mo?*" Tangan countered, "*Ikaw, ano ang gusto mo?*" With this, Tangan went to his car and got his .38 caliber handgun on the front seat. The subsequent events per account of the parties' respective witnesses were conflicting:

According to the prosecution witnesses, particularly, Mary Ann Borromeo, Rosalia Cruz and Manuel Miranda, the accused pointed his gun at Generoso Miranda and when Manuel Miranda tried to intervene, the accused pointed his gun at Manuel Miranda, and after that the accused pointed again the gun to Generoso Miranda, the accused shot Generoso Miranda at a distance of about a meter but because the arm of the accused was extended, the muzzle of the gun reached to about more or less one foot away from the body of Generoso Miranda. The shot hit the stomach of Generoso Miranda causing the latter to fall and while still conscious, Generoso Miranda told Manuel Miranda, his uncle, to get the gun. Manuel Miranda grappled for the possession of the gun and during their grappling, Rosalia Cruz intervened and took hold of the gun and after Rosalia Cruz has taken hold of the gun, a man wearing a red T-shirt

took the gun from her. The man in T-shirt was chased by Manuel Miranda who was able to get the gun where the man in red T-shirt placed it.

On the other hand, the defense, particularly the accused and his witness by the name of Nelson Pante claimed that after the gun was taken by the accused from inside his car, the Mirandas started to grapple for possession of the gun and during the grappling, and while the two Mirandas were trying to wrest away the gun from the accused, they fell down at the back of the car of the accused. According to the accused, he lost the possession of the gun after falling at the back of his car and as soon as they hit the ground, the gun fell, and it exploded hitting Generoso Miranda.<sup>[1]</sup>

After the gun went off, Tangan ran away. Meanwhile, Generoso lay on the ground bloodied. His uncle, Manuel, looked for the gun and ran after Tangan, joining the mob that had already pursued him. Tangan found a policeman who allowed him to enter his patrol car. Manuel arrived and told the policeman that Tangan had just shot his nephew. Then he went back to where Generoso lay and there found two ladies, later identified as Mary Ann Borromeo and Rosalina Cruz, helping his nephew board a taxi. Manuel suggested that Generoso be brought to the hospital in his car. He was rushed to the Philippine General Hospital but he expired on the way.

Tangan was charged with the crime of murder with the use of an unlicensed firearm.<sup>[2]</sup> After a reinvestigation, however, the information was amended to homicide with the use of a licensed firearm,<sup>[3]</sup> and he was separately charged with illegal possession of unlicensed firearm.<sup>[4]</sup> On arraignment, Tangan entered a plea of not guilty in the homicide case, but moved to quash the information for illegal possession of unlicensed firearm on various grounds. The motion to quash was denied, whereupon he filed a petition for *certiorari* with this Court.<sup>[5]</sup> On November 5, 1987, said petition was dismissed and the joint trial of the two cases was ordered.<sup>[6]</sup>

During the trial, the prosecution and the defense stipulated on the following: that the amount of P126,000.00 was incurred for the funeral and burial expenses of the victim;<sup>[7]</sup> that P74,625.00 was incurred for attorneys fees; and that the heirs of Generoso suffered moral damages, the amount of which is left for the courts to determine. After trial, the lower court acquitted Tangan of illegal possession of firearm, but convicted him of homicide. The privileged mitigating circumstance of incomplete self-defense and the ordinary mitigating circumstances of sufficient provocation on the part of the offended party and of passion and obfuscation were appreciated in his favor; consequently, the trial court ordered him to suffer an indeterminate penalty of two (2) months of *arresto mayor*, as minimum, to two (2) years and four (4) months of *prision correccional*, as maximum, and to indemnify the heirs of the victim.<sup>[8]</sup> Tangan was released from detention after the promulgation of judgment<sup>[9]</sup> and was allowed bail in the homicide case.

Private complainants, the heirs of Generoso Miranda, filed a petition for review with this Court, docketed as G.R. No. 102677, challenging the civil aspect of the court *a quo*'s decision, but the same was dismissed for being premature. On the other hand, Tangan appealed to the Court of Appeals, which affirmed the judgment of the trial

court but increased the award of civil indemnity to P50,000.00.<sup>[10]</sup> His subsequent motion for reconsideration and a motion to cite the Solicitor General in contempt were denied by the Court of Appeals.<sup>[11]</sup>

The Office of the Solicitor General, on behalf of the prosecution, alleging grave abuse of discretion, filed a petition for *certiorari* under Rule 65, docketed as G.R. No. 103613, naming as respondents the Court of Appeals and Tangan, where it prayed that the appellate court's judgment be modified by convicting accused-appellant of homicide without appreciating in his favor any mitigating circumstance.<sup>[12]</sup> Subsequently, the Office of the Solicitor General, this time acting for public respondent Court of Appeals, filed a motion for extension to file comment to its own petition for *certiorari*.<sup>[13]</sup> Discovering its glaring error, the Office of the Solicitor General later withdrew its motion for extension of time.<sup>[14]</sup> Tangan filed a Reply asking that the case be submitted for decision.<sup>[15]</sup>

Meanwhile, Tangan filed a separate petition for review under Rule 45, docketed as G.R. No. 105830.<sup>[16]</sup> Since the petition for *certiorari* filed by the Solicitor General remained unresolved, the two cases were consolidated.<sup>[17]</sup> The Office of the Solicitor General filed a manifestation in G.R. No. 105830, asking that it be excused from filing a comment to Tangan's petition for review, in order to avoid taking contradictory positions.<sup>[18]</sup>

In the recent case of *People v. Velasco and Galvez*,<sup>[19]</sup> we held that the prosecution cannot avail of the remedies of special civil action on *certiorari*, petition for review on *certiorari*, or appeal in criminal cases. Previous to that, we categorically ruled that the writ of *certiorari* cannot be used by the State in a criminal case to correct a lower court's factual findings or evaluation of the evidence.<sup>[20]</sup>

Rule 117, Section 7, of the Revised Rules of Criminal Procedure, is clear:

*Former conviction or acquittal; double jeopardy.* - When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

However, the conviction of the accused shall not be a bar to another prosecution for an offense which necessarily includes the offense charged in the former complaint or information under any of the following instances:

(a) the graver offense developed due to supervening facts arising from the same act or omission constituting the former charge;

(b) the facts constituting the graver charge became known or were discovered only after a pleas was entered in the former complaint or information; or

(c) the plea of guilty to the lesser offense was made without the consent of the fiscal and of the offended party, except as provided in section 1(f) of Rule 116.

In any of the foregoing cases, where the accused satisfies or serves in whole or in part the judgment, he shall be credited with the same in the event of conviction for the graver offense.

Based on the foregoing, the Solicitor General's petition for *certiorari* under Rule 65, praying that no mitigating circumstance be appreciated in favor of accused-appellant and that the penalty imposed on him be correspondingly increased, constitutes a violation of Tangan's right against double jeopardy and should be dismissed.

We now come to the petition for review filed by Tangan. It is noteworthy that during the trial, petitioner Tangan did not invoke self-defense but claimed that Generoso was accidentally shot. As such, the burden of proving self-defense,<sup>[21]</sup> which normally would have belonged to Tangan, did not come into play. Although Tangan must prove his defense of accidental firing by clear and convincing evidence,<sup>[22]</sup> the burden of proving the commission of the crime remained in the prosecution.

Both the trial court and the Court of Appeals appreciated in favor of Tangan the privileged mitigating circumstance of incomplete self-defense under Article 13 (1), in relation to Article 11 (1), of the Revised Penal Code, to wit:

**ARTICLE 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.

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**ARTICLE 13. *Mitigating Circumstances.*** - The following are mitigating circumstances:

1. Those mentioned in the preceding Chapter, when all the requisites necessary to justify the act or to exempt from criminal liability in the respective cases are not attendant.

Incomplete self-defense is not considered as a justifying act, but merely a mitigating circumstance; hence, the burden of proving the crime charged in the information is

not shifted to the accused.<sup>[23]</sup> In order that it may be successfully appreciated, however, it is necessary that a majority of the requirements of self-defense be present, particularly the requisite of unlawful aggression on the part of the victim.<sup>[24]</sup> Unlawful aggression by itself or in combination with either of the other two requisite suffices to establish incomplete self-defense. Absent the unlawful aggression, there can never be self-defense, complete or incomplete,<sup>[25]</sup> because if there is nothing to prevent or repel, the other two requisites of defense will have no basis.<sup>[26]</sup>

There is no question that the bullet which hit the victim was fired from the caliber. 38, which was issued to Tangan by the Philippine Navy. The cause of death was severe hemorrhage secondary to gunshot wound of the abdomen, caused by the bullet fired from a gun of the said caliber. The prosecution claimed that Tangan shot the victim point-blank in the stomach at a distance of about one foot. On the other hand, Tangan alleged that when he grappled with Generoso and Manuel Miranda for possession of the gun, it fell to the ground and accidentally fired, hitting the victim.

When the testimonies of witnesses in open court are conflicting in substantial points, the calibration of the records on appeal becomes difficult. It is the word of one party against the word of the other. The reviewing tribunal relies on the cold and mute pages of the records, unlike the trial court which had the unique opportunity of observing first-hand that elusive and incommunicable evidence of the witness' deportment on the stand while testifying.<sup>[27]</sup> The trial court's assessments of the credibility of witnesses is accorded great weight and respect on appeal and is binding on this Court,<sup>[28]</sup> particularly when it has not been adequately demonstrated that significant facts and circumstances were shown to have been overlooked or disregarded by the court below which, if considered, might affect the outcome hereof.<sup>[29]</sup> The rationale for this has been adequately explained in that,

The trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, and carriage and mien.<sup>[30]</sup>

Equally, when a person fabricates a story, he usually adopts a simple account because a complex one might lead to entanglement from which he may find it hard to extricate himself. Along the same line, the experience of the courts and the general observations of humanity teach us that the natural limitations of our inventive faculties are such that if a witness delivers in court a false narrative containing numerous details, he is almost certain to fall into fatal inconsistencies, to make statements which can be readily refuted, or to expose in his demeanor the falsity of his message.<sup>[31]</sup> Aside from this, it is not also unusual that the witness may have been coached before he is called to the stand to testify.

Somewhere along the painstaking review of the evidence on record, one version rings the semblance of truth, not necessarily because it is the absolute truth, but simply because it is the best approximation of the truth based on the declarations of