

SECOND DIVISION

[G.R. Nos. 132482-83, February 20, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELISEO TIO Y TORCUATO ALIAS "ELISEO TAWANGEN," ACCUSED-APPELLANT.

D E C I S I O N

BELLOSILLO, J.:

FOR SHOOTING DOWN his erstwhile business associate with the use of an unlicensed firearm, ELISEO TIO Y TORCUATO was charged with murder and violation of PD 1866 (Illegal Possession of Firearm and Ammunitions).

On 15 January 1998 the trial court convicted Eliseo Tio of the crime of murder qualified by treachery and with the aggravating circumstance of use of unlicensed firearm and sentenced him to *reclusion perpetua*. He was also ordered to indemnify the heirs of the deceased Albert Lestino P50,000.00 for his death, P350,345.00 for actual damages, P500,000.00 for moral damages, and P11,880,000.00 for the loss of his earning capacity.^[1]

On 28 October 1996 at around 8:00 o'clock in the evening Richard Acop and accused Eliseo Tio, both contractors by profession, arrived at the Baguio First Hotel to talk business with fellow contractors. They joined their friends Ramos Guibac, Hilario Tacio and Merino Tande who were drinking and huddled in one corner.

Richard Acop, as principal witness for the prosecution, narrated that he left the group momentarily to make a long distance call to his wife in Hong Kong. It took him about thirty (30) minutes to make the call after which he returned to the Baguio First Hotel to rejoin his group. Not long after, Albert Lestino arrived in the company of Hector Ramirez, Reynaldo Acop, Gundre Eckman and Erickson Felipe. They occupied another table, except Lestino who instead of joining his group proceeded to the table of Richard and company and sat next to accused Tio.

Albert Lestino then asked Richard to buy some drinks but the latter said he had no money. Richard gave in only after Lestino talked to the restaurant manager and guaranteed payment of the bill. The conversations were at most jovial until an argument between Tio and Lestino disrupted the gaiety of the moment. Tio was trying to collect an unpaid debt from Lestino and was incensed by the inability of Lestino to settle his obligation. Tio stood up and strongly tapped the shoulder of Lestino. Richard and Erickson pacified Tio and took him out of the restaurant.

Meantime, Lestino transferred to the other table occupied by Reynaldo Acop, Gundre Eckman and Hector Ramirez. When Tio and Richard returned, Tio joined the table to which Lestino had transferred. Before long, the two (2) were again engaged in a heated conversation. The proverbial cool heads once again intervened and Richard

and Reynaldo were able to persuade Tio who was then fuming mad to leave the restaurant for a while. To placate his friend Eliseo Tio, Richard had to tell him that the debt owing him was small and even promised him a share in the project which they would follow up the next day. Tio then went to his car parked outside the restaurant. For his part, Richard entered the comfort room to relieve himself while Reynaldo went back to the restaurant to be with his friends again.

With no one around to thwart his plans, with a gun in hand, Tio hurriedly rushed back to the restaurant. He positioned himself at the right side of Lestino, and from a distance of about two (2) to three (3) meters away, aimed and fired his gun at Lestino who was then sitting complacently with his hands resting on the table. Lestino clutched his breast indicating that he had been hit and tried to stand up. But Tio fired a second shot hitting Lestino again with the bullet piercing his body and causing him to sway, move forward and fall on the ground.

With the exception of Richard, who had just come from the comfort room, Reynaldo and Gundre, everyone scampered for safety. Richard and Reynaldo lunged at Tio and grappled with him for the possession of his gun. Reynaldo held Tio's shoulder while Richard grasped his hands. With Tio thus immobilized, Gundre wrested the weapon from him. In the confusion that followed, Tio broke loose and escaped.

In the aftermath, Larry Tacio and Richard Acop, who opted to stay behind, found Lestino bleeding profusely and in the throes of death. Tacio beckoned Richard to look for a taxi but the latter returned empty-handed. Police officers responding to the distress call by a restaurant personnel, came and rushed the victim to the nearest hospital. But any attempt to revive him proved futile; he died soon after.

Aside from Richard Acop, the prosecution also presented five (5) other eyewitnesses: (a) Gundre Eckman who testified that after wresting possession of the weapon, he brought the weapon home, confused as to what to do with it. But the following morning, 29 October 1996, he together with Reynaldo Acop immediately turned over the fatal weapon, its magazine and five (5) live ammos to the Baguio police; (b) Reynaldo Acop, Hilario Tacio, Ramos Guibac and a certain Romulo Antonio, a bystander, all gave substantially identical testimonies and positively identified accused Eliseo Tio y Torcuato alias "Eliseo Tawangen" as the gunwielder in the slaying of Albert Lestino.

Dr. John Tinoyan noted in his autopsy report that Albert Lestino suffered two (2) gunshot wounds - one entering the right chest and exiting at the back, left of his body with the trajectory of the bullet going downward but sideways from the right to the left and the other, hitting the right elbow and fragmenting on impact, with some fragments entering the lungs. According to Dr. Tinoyan, the downward trajectory of the bullet would show that the victim was at a lower elevation while his assailant was at a higher plane.

Ireneo Ordonio, a ballistics expert, averred that the .45-caliber empty shell found at the scene of the crime was fired from the firearm recovered from Tio. In any event, the .45 caliber pistol with Serial No. 2391869 used by Tio turned out to be an unlicensed firearm, and Records from the Firearms and Explosives Unit at Camp Crame showed that Tio was not a registered firearm holder of any kind and caliber.

Norma Lestino, the widow of the victim, testified that her family spent a total of

P350,345.00 from 28 October to 4 November 1996 for the wake and funeral of her husband. At the time of his death, Albert was forty-seven (47) years old and was earning about P60,000.00 a month as a contractor.

In his defense, accused Eliseo Tio painted a different picture altogether. He narrated that in the morning of 28 October 1996 he went to Camp Dangwa, particularly to the office of one Col. Martin, to follow up on his friend Lestino's application for a permit to carry a firearm. At the office, he was told by Col. Martin that the permit was not yet available. Soon after, he proceeded to the Department of Public Works and Highways (DPWH) in Wangal, La Trinidad, Benguet, to attend to other matters. There he met Richard Acop, a fellow contractor. After taking their lunch, the two (2) decided to go up to Baguio City.

Upon request of Richard, the two (2) dropped by his house in Tublay, Benguet, as he (Richard) wanted to get something from there. Tio waited inside the car as Richard went up his house. Upon Richard's return, Tio noticed a .45-caliber pistol tucked in his waist. When he called Richard's attention on the matter, the latter nonchalantly quipped: "*Kabutbuteng ti panawen tattan*" (This is only for our defense as these are dangerous times).^[2] Thereafter they proceeded to Baguio and stopped at the Baguio First Restaurant for a drink. While they were drinking, Lestino arrived and joined them. Not long after, another group consisting of Erickson Felipe, Reynaldo Acop, Gundre Eckman and Hector Ramirez also entered the restaurant. The newcomers sat at another table.

Trouble started, according to Tio, when Richard disclosed to Lestino that the licenses for a project in which the two (2) were sharing were not yet available. Lestino irately asked Richard in a loud voice: "Why is it like that?" At this juncture, both Lestino and Richard stood up and a heated exchange followed. Richard then left in a huff through the back door. Thinking that Richard had gone to the comfort room, Tio followed but Richard was nowhere inside. As he was leaving the comfort room, two (2) gunshots were heard, and when he reentered the restaurant, he saw Richard Acop tucking a gun in his waist while Lestino was lying wounded on the floor. Instinctively he exclaimed: "Why, what happened there?"

In reply, Richard said: "You run away with his gun (referring to Lestino)!" But before he could react, Erickson rushed in front of him, grabbed the gun from Richard and fled towards the backdoor. But Tio was quick to grab him saying the gun was Lestino's. Erickson stopped and obligingly handed Tio the weapon who snatched the gun and held it with outstretched arms. Reynaldo, Gundre and Richard grappled with Tio for the gun. In the scuffle, Tio accidentally squeezed the trigger and the gun went off twice. Finally, Gundre succeeded in wresting the weapon from him. Now frightened, Tio escaped after overhearing that Gundre's companions were exhorting the latter to shoot him. He sought refuge in the house of his friend Col. Martin who advised him to surrender to the authorities, as he did.

In support of Tio's claim, Lea Cruz narrated that at around 9:00 in the evening of 28 October 1996 while she and her live-in partner were dining inside the Baguio First Restaurant, she noticed two (2) men arguing loudly in another table. She described one of them as tall and thin, and the other, as short and stout. According to Lea, the stout man drew a gun but the thin one deftly grabbed it from the stout man. Without his gun, the stout man sat down while the thin man, now in possession of the weapon, remained standing. Despite the intervention of cooler heads, the thin