

FIRST DIVISION

[G.R. No. 128536, January 31, 2000]

**P/INSP. ROQUE G. GALANG, petitioner, vs. COURT OF APPEALS
and PEOPLE OF THE PHILIPPINES, respondents.**

D E C I S I O N

PARDO, J.:

The case is an appeal *via certiorari* from the decision of the Court of Appeals^[1] finding petitioner guilty of homicide and "appreciating the privileged mitigating circumstance of incomplete justifying circumstance of performance of duty as provided under paragraph 1, Article 13 in relation to paragraph 5, Article 11 of the Revised Penal Code", sentencing him to six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum, to indemnify the heirs of Carlos Oro in the amount of fifty thousand pesos (P50,000.00) and costs.

Police Inspector Roque G. Galang was originally charged with homicide by information filed with the Regional Trial Court, Romblon, Odiongan, Branch 82 which reads as follows:

"That on or about the 26th day of November, 1992, at around 8:30 o'clock in the evening, in the Poblacion, Municipality of Alcantara, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, did then and there wilfully, unlawfully and feloniously shot with a .45 cal. pistol, one CARLOS G. ORO, inflicting upon the latter, mortal gunshot wounds in different parts of his body which were the cause of this death."^[2]

After due trial on plea of not guilty, on May 17, 1994, the trial court rendered decision finding accused Police Inspector Roque G. Galang guilty, as charged, rejecting his claim of self defense. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, this Court finds the accused, Police Inspector Roque Galang, guilty beyond reasonable doubt of the crime of Homicide, as defined and prescribed under ART. 249 of the Revised Penal Code, and, with neither aggravating nor mitigating circumstances, their attendance having been off-set by each other, and applying the Indeterminate Sentence Law, he is hereby sentenced to an imprisonment of eight (8) years and one (1) day of *prision mayor*, as minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum; (People vs. Raquito Y. Tolentino, G. R. No. 90766, 13 August '90); to pay the heirs of the victim, Carlo Oro, the sum of P30,000.00 as damages; plus costs."^[3]

In due time, accused appealed to the Court of Appeals.^[4]

On November 29, 1996, the Court of Appeals promulgated its decision affirming with modification that of the trial court, as set forth in the opening paragraph of this decision.

On March 3, 1997, the Court of Appeals denied accused-appellant's motion for reconsideration.^[5]

Hence, this petition.^[6]

The Court of Appeals found the following facts:

"On November 26, 1992, the town of Alcantara in Romblon was in a festive mood since the provincial meet was being held, in a cultural program hold "Sayawitan" was scheduled that night.

"That day also happened to be the birthday of Carlos Oro, and, ironically, the day of his demise. As it was his birthday, Carlos celebrated by going on a drinking spree. At around 7:00 o'clock that evening, Carlos went home, drunk. After a while, he left, never to return again. At around 8:00 o'clock, in front of the house of ex-Governor Solidum, Carlos figured in an altercation with one Jojo Marcelo. Later on, he similarly had a run-in with one Dennis Lota, who happened to pass by.

"Reports of the altercation reached appellant who, together with policeman Adreo Galin and CAFGU members, proceeded to the place. Upon seeing Carlos, appellant drew his gun and pointed it at him, and said: "Carlos, buhe-i imong baril, ako si Inspector Galang" (Carlos, drop your gun, I am Inspector Galang). Carlos raised his hands, saying: "Nong Roque, indi ako mag laban" (Nong Roque, I will not fight back). Thereafter, appellant grab the right arm of Carlos and forced him to kneel on the ground with his right hand behind his back still being held by the appellant. It was in this position when appellant pumped two (2) bullets into Carlos who slumped to the ground. Appellant ordered his men to get a tricycle to bring Carlos to the hospital. He was pronounced dead upon arrival."^[7]

At issue is whether the Court of Appeals erred in convicting the petitioner of homicide, not appreciating his claim of self-defense.

We deny the petition.

The rule is well established that factual findings of the trial court are binding on the Supreme Court when supported by substantial evidence on record and carry more weight when affirmed by the Court of Appeals.^[8]

In this petition, petitioner imputes as errors the Court of Appeals' failure to appreciate his claim of self-defense and its reliance on the testimonies of prosecution witnesses.

We agree with the Court of Appeals that petitioner failed to prove his claim of self-defense. Generally, "the burden lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt rather than upon the accused that he was in fact