

EN BANC

[G.R. No. 132547, September 20, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPO1 ERNESTO ULEP, ACCUSED-APPELLANT.

D E C I S I O N

BELLOSILLO, J.:

In the aftermath of an incident where a certain Buenaventura Wapili^[1] went berserk at Mundog Subdivision, Poblacion Kidapawan, Cotabato, in the early morning of 22 December 1995, Police Officer Ernesto Ulep was found guilty of murder and sentenced to death by the trial court for killing Wapili. Ulep was also ordered to indemnify the heirs of the victim in the amount of P50,000.00 and to pay the costs.

^[2]

The evidence shows that at around two o' clock in the morning of 22 December 1995 Buenaventura Wapili was having a high fever and was heard talking insensibly to himself in his room. His brother-in-law, Dario Leydan, convinced him to come out of his room and talk to him, but Wapili told Leydan that he could not really understand himself. After a while, Wapili went back to his room and turned off the lights. Moments later, the lights went on again and Leydan heard a disturbance inside the room, as if Wapili was smashing the furniture.^[3] Unable to pacify Wapili, Leydan called Pastor Bonid of the Alliance Church of Kidapawan to help him "pray over" Wapili, but they could not enter the latter's room as he became wild and violent. Suddenly, Wapili bolted out of his room naked and chased Leydan. Thereafter, Leydan with the aid of two (2) of his neighbors attempted to tie Wapili with a rope but was unsuccessful as Wapili was much bigger in built and stronger than anyone of them.^[4] Wapili, who appeared to have completely gone crazy, kept on running without any particular direction.

Thus, Leydan went to the house of policewoman Norma Plando, a neighbor, and asked for assistance. As Wapili passed by the house of Plando, he banged Plando's vehicle parked outside. Using a hand-held radio, Plando then contacted SPO1 Ernesto Ulep, SPO1 Edilberto Espadera and SPO2 Crispin Pillo, all members of the PNP assigned to secure the premises of the nearby Roman Catholic Church of Kidapawan.^[5]

At around four o'clock in the morning of the same day, SPO1 Ulep together with SPO1 Espadera and SPO2 Pillo arrived at the scene on board an *Anfra* police service jeep. The three (3) police officers, all armed with M-16 rifles, alighted from the jeep when they saw the naked Wapili approaching them. The kind of weapon Wapili was armed with is disputed. The police claimed that he was armed with a bolo and a rattan stool, while Wapili's relatives and neighbors said he had no bolo, but only a rattan stool.

SPO1 Ulep fired a warning shot in the air and told Wapili to put down his weapons or they would shoot him. But Wapili retorted "*pusila!*" ("fire!") and continued advancing towards the police officers. When Wapili was only about two (2) to three (3) meters away from them, SPO1 Ulep shot the victim with his M-16 rifle, hitting him in various parts of his body. As the victim slumped to the ground, SPO1 Ulep came closer and pumped another bullet into his head and literally blew his brains out.^[6]

The *post mortem* examination of the body conducted by Dr. Roberto A. Omandac, Municipal Health Officer of Kidapawan, showed that Wapili sustained five (5) gunshot wounds: one (1) on the right portion of the head, one (1) on the right cheek, one (1) on the abdomen and two (2) on the right thigh: SHEENT - gunshot wound on the right parietal area with fractures of the right temporoparietal bones with evisceration of brain tissues, right zygomatic bone and right mandible, lateral aspect; CHEST AND BACK - with powder burns on the right posterior chest; ABDOMEN - gunshot wound on the right upper quadrant measuring 0.5 cm. in diameter (point of entry) with multiple powder burns around the wound and on the right lumbar area (point of exit). Gunshot wound on the suprapubic area (point of entry); EXTREMITIES - with gunshot wounds on the right thigh, upper third, anterior aspect measuring 0.5 cm. in diameter with powder burns (point of entry) and right buttocks measuring 0.5 cm. in diameter (point of exit); gunshot wound on the right thigh, upper third, posterolateral aspect; CAUSE OF DEATH - multiple gunshot wounds.^[7]

Dr. Omandac concluded that the shots were fired at close range, perhaps within twenty-four (24) inches, judging from the powder burns found around some of the wounds in the body of the victim,^[8] and that the wound in the head, which caused the victim's instantaneous death, was inflicted while "the victim was in a lying position."^[9]

The Office of the Ombudsman for the Military filed an Information for murder against SPO1 Ulep. The accused pleaded not guilty to the charge on arraignment, and insisted during the trial that he acted in self-defense. However, on 28 October 1997, the trial court rendered judgment convicting the accused of murder and sentencing him to death -

The means employed by the accused to prevent or repel the alleged aggression is not reasonable because the victim, Buenaventura Wapili, was already on the ground, therefore, there was no necessity for the accused to pump another shot on the back portion of the victim's head. Clearly the gravity of the wounds sustained by the victim belies the pretension of the accused that he acted in self-defense. It indicates his determined effort to kill the victim. It is established that accused (sic) was already in the ground that would no longer imperil the accused's life. The most logical option open to the accused was to inflict on the victim such injury that would prevent the victim from further harming him. The court is not persuaded by the accused's version because if it is true that the victim attacked him and his life was endangered - yet his two (2) companions SPO1 Espadera and SPO2 Pillo did not do anything to help him but just witness the incident - which is unbelievable and unnatural behavior of police officers x x x x

WHEREFORE, prescinding from the foregoing, judgment is hereby rendered finding the accused Ernesto Ulep guilty beyond reasonable doubt of the crime of Murder, the accused is hereby sentenced to suffer the extreme penalty of Death, to indemnify the heirs of Buenaventura Wapili the amount of P50,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

Death penalty having been imposed by the trial court, the case is now before us on automatic review. Accused-appellant prays for his acquittal mainly on the basis of his claim that the killing of the victim was in the course of the performance of his official duty as a police officer, and in self-defense.

Preliminarily, having admitted the killing of Wapili, accused-appellant assumed the burden of proving legal justification therefor. He must establish clearly and convincingly how he acted in fulfillment of his official duty and/or in complete self-defense, as claimed by him; otherwise, he must suffer all the consequences of his malefaction. He has to rely on the quantitative and qualitative strength of his own evidence, not on the weakness of the prosecution; for even if it were weak it could not be disbelieved after he had admitted the killing.^[10]

Before the justifying circumstance of fulfillment of a duty under Art. 11, par. 5, of *The Revised Penal Code* may be successfully invoked, the accused must prove the presence of two (2) requisites, namely, that he acted in the performance of a duty or in the lawful exercise of a right or an office, and that the injury caused or the offense committed be the necessary consequence of the due performance of duty or the lawful exercise of such right or office. The second requisite is lacking in the instant case.

Accused-appellant and the other police officers involved originally set out to perform a legal duty: to render police assistance, and restore peace and order at Mundog Subdivision where the victim was then running amuck. There were two (2) stages of the incident at Mundog Subdivision. During the first stage, the victim threatened the safety of the police officers by menacingly advancing towards them, notwithstanding accused-appellant's previous warning shot and verbal admonition to the victim to lay down his weapon or he would be shot. As a police officer, it is to be expected that accused-appellant would stand his ground. Up to that point, his decision to respond with a barrage of gunfire to halt the victim's further advance was justified under the circumstances. After all, a police officer is not required to afford the victim the opportunity to fight back. Neither is he expected - when hard pressed and in the heat of such an encounter at close quarters - to pause for a long moment and reflect coolly at his peril, or to wait after each blow to determine the effects thereof.

However, while accused-appellant is to be commended for promptly responding to the call of duty when he stopped the victim from his potentially violent conduct and aggressive behavior, he cannot be exonerated from overdoing his duty during the second stage of the incident - when he fatally shot the victim in the head, perhaps in his desire to take no chances, even after the latter slumped to the ground due to multiple gunshot wounds sustained while charging at the police officers. Sound discretion and restraint dictated that accused-appellant, a veteran policeman,^[11] should have ceased firing at the victim the moment he saw the latter fall to the ground. The victim at that point no longer posed a threat and was already incapable