

ELISEO ARANETA, JR., PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-43527. July 03, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Should an accused who admittedly shot the victim but is shown to have inflicted only a slight wound be held accountable for the death of the victim due to a fatal wound caused by his co-accused? This is the focal issue addressed to this Court in this case.

In an Information filed before the Circuit Criminal Court of Manila, 6th Judicial District on May 14, 1973, Eliseo Araneta, Jr. y Macute, herein petitioner, Benjamin Bautista y Mendoza, also a petitioner, Eden Ng y Dumantay and Joselito "Boy" Santiago were charged with murder for the death of one Manuel Esteban, Jr. due to multiple gun shot wounds on March 23, 1972.

After arraignment, with all the accused entering a plea of not guilty, and the trial on the merits, the trial court rendered its decision dated August 30, 1973, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered as follows:

1) Finding accused Eliseo Araneta, Jr. y Macute and Benjamin Bautista y Mendoza guilty beyond reasonable doubt as principals of the crime of homicide and there being proved the mitigating circumstance of voluntary surrender without any aggravating circumstance to offset the same, the court sentences each one of them to an indeterminate penalty ranging from six (6) years and one (1) day of prision mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum, to jointly and severally indemnify the heirs of the deceased Manuel Esteban, Jr. the sum of P12,000.00 for the death of the latter; the sum of P20,000.00 by way of moral damages; the sum of P169,600.00 by way of consequential damages and to proportionately pay the costs.

2) Acquitting accused Eden Ng y Dumantay and Joselito Boy Santiago of the crime charged for failure of the prosecution to prove their guilt beyond reasonable doubt, with costs de oficio. Their release is hereby ordered unless there is valid ground for further detaining them.

The gun of Araneta (Exhibit "P") is hereby confiscated in favor of the State and ordered delivered right away to the Armed Forces of the Philippines.

In the event that accused Araneta and Bautista would appeal, an appeal bond of P14,800.00 for each of them is hereby fixed.

SO ORDERED."[1]

Eliseo Araneta, Jr. and Benjamin Bautista appealed their conviction to the Court of Appeals.

On February 20, 1976, the appellate court rendered its decision affirming the decision of the trial court with

modification as to the civil liability of petitioners for the loss of earning capacity of the deceased by decreasing the same from the amount of P169,600.00 to only P43,200.00.[2]

Eliseo Araneta, Jr. and Benjamin Bautista filed separate petitions for review on certiorari of the decision of the Court of Appeals which were consolidated per resolution of this Court dated September 6, 1976.

Petitioner Araneta, Jr. submits two legal issues for considerations to wit:

"I.

ON THE BASIS OF THE FACTS AND FINDINGS IN THE DECISION ITSELF, PETITIONER ARANETA CANNOT BE CONVICTED OF HOMICIDE; BUT, AT MOST, ONLY OF SLIGHT PHYSICAL INJURIES; and

II

ON THE BASIS OF THE FACTS AND FINDINGS IN THE DECISION ITSELF, PETITIONER ARANETA SHOULD BE ACQUITTED ON THE GROUND OF SELF-DEFENSE AND/OR DEFENSE OF STRANGERS.”[3]

Petitioner Bautista assigns the following errors:

"I

WHETHER OR NOT THE CONCLUSIONS OF THE RESPONDENT COURT ARE NOT CLEARLY CONTRARY TO LAW OR JURISPRUDENCE.

II

WHETHER OR NOT THE RESPONDENT COURT IN ITS FINDINGS INDULGED IN SPECULATIONS, SURMISES AND CONJECTURES TOTALLY UNCALLED FOR AND COMPLETELY UNWARRANTED BY THE EVIDENCE, CONTRARY TO LAW.

III

WHETHER OR NOT THE CONCLUSIONS OF RESPONDENT COURT OF APPEALS AND THE TRIAL COURT ARE GROUNDED ON MISAPPREHENSION OF FACTS, AND WITH GRAVE ABUSE OF DISCRETION.

IV

WHETHER OR NOT THE RESPONDENT COURT AND THE TRIAL COURT GRAVELY ERRED IN NOT REJECTING THE CONFLICTING STATEMENTS AND TESTIMONIES OF PROSECUTION WITNESSES.

V

WHETHER OR NOT CIRCUMSTANCES OF WEIGHT AND INFLUENCE HAVE EITHER BEEN OVERLOOKED OR MISINTERPRETED, WHICH OTHERWISE WILL LEAD TO ACQUITTAL.”[4]

The facts of this case as found by both the trial court and the appellate court on the basis of the evidence show the following:

At about a little past midnight of March 22, 1972, while the victim Manuel Esteban, Jr. and his companions Jaime

Roque, Eduardo Saguil, Jesus Dizon and Charles Go were having a drinking spree at the mezzanine floor of the Sands Kitchenette, Rizal Avenue, Manila, a napkin container was thrown to their table coming from a group of three or four persons, which included the petitioners. The victim approached the group of petitioner Araneta, Jr. after which a heated argument ensued. Petitioner Bautista pushed the left shoulder of the victim causing the latter to spin at which time, petitioner Araneta, Jr. fired his gun with his left hand (his right hand is atrophied), hitting the victim, who was then in a stooping position, at the back. Having been shot, the victim drew his gun and fired indiscriminately hitting Manuel de Guzman, a companion of petitioner Araneta, Jr. on his left thigh. The bullet which wounded De Guzman hit the wall and ricocheted, hitting one of the accused Eden Ng along his umbilical cord. Petitioner Bautista then held the victim who was bent forward, on his right wrist and poked a gun at him. At this point, petitioner Bautista suddenly fired his gun hitting the chest of the victim. Roque and Saguil together with a bouncer from a nearby Soda Fountain brought the victim to the Jose Reyes Memorial Hospital where he was pronounced dead on arrival.

We will first dispose of the second issue raised by petitioner Araneta, Jr. that he should be acquitted on the ground of self-defense and/or defense of strangers.

The rule is well-settled that an indispensable requirement of self-defense and defense of strangers under paragraphs 1 and 3, respectively, of Article 11, Revised Penal Code is unlawful aggression on the part of the victim.[5] This element is not present in the case at bar.

Petitioner Araneta would have Us believe that the unlawful aggression emanated from the victim alleging that the latter was under heavy influence of liquor at the time of the incident, that it was he who suddenly accosted their group because of the napkin container thrown at his table and that he was the first to fire the shot.

For unlawful aggression to be present in self-defense, there must be an assault or at least a threatened assault of an immediate and imminent kind on the person defending himself.[6] In this case, there was no actual physical assault on petitioner Araneta, Jr. or any member of his group. Neither was it shown that the victim exhibited an intimidating attitude that is offensive and positively strong, showing the wrongful intent to cause an injury.[7] When the victim approached the group of Araneta, Jr., presumably to confront them as to the napkin container thrown at their table, he was not yet brandishing his gun as testified to by the prosecution witnesses. A mere threatening attitude on the part of the victim will not constitute unlawful aggression.[8] If there was any unlawful aggression, it came from the group of petitioner Araneta, Jr. when Bautista pushed the victim's shoulder after which petitioner Araneta, Jr. fired the first shot hitting the victim. It was only at this time when the victim drew his gun and fired indiscriminately. These facts have been duly established by the evidence for the prosecution.

Petitioner Araneta, as the accused, must establish self-defense by clear and convincing evidence.[9] He must rely on the strength of his own evidence and not on the weakness of that of the prosecution, for even if it were weak, it could not be disbelieved after he himself admitted shooting the victim.[10]

There being no unlawful aggression on the part of the victim, petitioner cannot claim the justifying circumstance of self-defense to absolve him from criminal liability for inflicting injury upon the victim. But for what crime should he be held liable - homicide or slight physical injuries?

Per the post-mortem findings report prepared by Dr. Abelardo B. Lucero, Medico Legal Examiner, Manila Metropolitan Police, the victim died of "shock and hemorrhage due to multiple (2) gunshot wounds in the anterior and posterior chest lacerating the diaphragm, liver, stomach and spleen." [11] Dr. Lucero testified that wound no. 1 located at the anterior right chest is a contact wound because the muzzle of the gun touched the skin of the body of the victim which is a fatal wound, while wound No. 2 found at the back of the victim is a slight wound making it possible for the victim to fire a gun even after sustaining such wound. Per opinion of Dr. Lucero, wound Nos. 1

and 2 have been caused by bullets of different caliber, or at least by different firearms, with wound No. 2 inflicted ahead of wound No. 1. The trial court then ruled that wound No. 2 was caused by the gun of petitioner Araneta, Jr. who was established to have fired first and that wound No. 1 was inflicted by petitioner Bautista.

Petitioner Araneta, relying on this finding of the trial court, now argues that wound No. 2 not being a fatal wound but only a slight wound would not make him criminally liable for the death of the victim. He points out that had not petitioner Bautista subsequently shot the victim during the scuffle for the gun of the latter, the victim would not have died. He asserts that since there was no conspiracy established, the liability of petitioner Araneta, Jr. should only be for the crime of slight physical injuries.

The State through the Solicitor General in opposing the theory of petitioner Araneta, Jr. argues that the denomination of wound No. 2 as "slight" merely refers to the gunshot wound of entry and that the medical findings show that the victim died due to shock and hemorrhage caused by two gunshot wounds - wound No. 1 and wound No. 2. The Solicitor General further contends that since none of the wounds is "thru and thru" and therefore one cannot be the wound of entry while the other the wound of exit, the conclusion becomes ineluctable that the two gunshot wounds, one in front and one at the back caused the shock, hemorrhage and the laceration of the internal organs.

Petitioner Araneta, Jr. retorts by saying that the two (2) gunshot wounds are "thru and thru" thus resulting in four wounds, two of entry and two of exit; thus, the "two (2) gunshot wounds" which caused the shock and hemorrhage resulting in the death of the victim refer to the wounds caused by gunshot No. 1 fired by petitioner Bautista.

We agree with petitioner Araneta, Jr.

The postmortem findings report details the wounds sustained by the victim -

"POSTMORTEM FINDINGS

EXTERNAL FINDINGS:

(1) Gunshot wound of entry marked I measuring 1.5 cm. in diameter surrounded with powder burns located in the anterior right chest, midclavicular line at the level of the 4th cartilage, 51.6 inches from the heel. The bullet is directed obliquely downwards to the left at an angle of 45 degrees posteriorly and came out thru gunshot wound of exit I-A measuring 0.8 cm. x 0.9 cm. located in the left lateral chest at the level of the 9th intercostal space 46 inches from the heel, post axillary line fracturing the right 4th cartilage lacerating the diaphragm, stomach and spleen. (fatal)

(2) Gunshot wound of entry II measuring 0.5 x .0.8 cm. with collar contusion 56 inches from the heel, preceded by 4 cm. elongated almost triangular reddish superficial abrasion measuring 0.2. cm. at its lowest and widening upwards to 0.5 cm. at its base, located in the left posterior midlateral chest and the bullet came out thru gunshot wound of exit II-A measuring 1 x 0.9 cm. located in the lateral posterior left shoulder 59.5 inches from the heel.

The bullet was fired directed obliquely upwards to the left at an angle of 35 degrees lacerating the skin and subcutaneous tissues for a distance of 7 cm. and came out thru a rugged everted gunshot wound of exit II-A, 56 inches from the heel (slight injury).

x x x."[12]

We can clearly see that there were four gunshot wounds. The gunshot fired by petitioner Bautista, produced gunshot wound of entry I located at the anterior right chest with the bullet coming out thru gunshot wound of exit

I-A in the left lateral chest. The second gunshot fired by petitioner Araneta, Jr. caused gunshot wound of entry II located in the left posterior midlateral chest with the bullet coming out thru gunshot wound of exit II-A at the lateral posterior left shoulder. The bullet fired from the gun of petitioner Araneta, Jr. only lacerated the skin and subcutaneous tissues, thus, its classification by Dr. Lucero as a slight injury. The bullet fired from the gun of petitioner Bautista lacerated the diaphragm, liver,[13] stomach and spleen proving to be fatal to the victim. There can be no other conclusion except that the "two gunshot wounds" indicated under the cause of death refer to the gunshot wounds of entry and exit located at the anterior right chest and the left lateral chest, respectively, produced by the gunshot fired by petitioner Bautista which lacerated the diaphragm, liver, stomach and spleen.

The nature of the wound inflicted by petitioner Araneta, Jr. having been settled as a slight injury, should he be held responsible for the death of the victim?

There is no pretension that there was any conspiracy between the petitioners. There was no concerted action pursuant to a common criminal design between the petitioners.[14] In the absence of conspiracy, each of the accused, herein petitioners, is responsible only for the consequences of his own acts.[15]

Thus, in a case where one accused inflicted the mortal wound by stabbing the victim with a knife while the other two assailants merely hit the victim with a bamboo on the left arm and the head, the former was held guilty of murder while the latter was held liable only for lesiones leves or slight physical injuries.[16] In still another case where two persons attacked a single victim, one inflicting a fatal wound hacking the victim with a bolo almost amputating the left arm completely, while the other also using a bolo struck the victim just below the armpit causing a wound that would heal in ten (10) days, the one who inflicted the mortal wound was convicted of murder while the other only of less serious physical injuries.[17]

The gunshot wound inflicted by petitioner Araneta, Jr. was a slight wound which did not cause the death of the victim nor materially contributed to it in order that he may be held liable for homicide.[18] His liability should therefore be limited to the slight injury he caused. However, the fact that petitioner Araneta, Jr. inflicted a gunshot wound on the victim shows the intent to kill. The use of a gun fired at another certainly leads to no other conclusion than that there is intent to kill. He is therefore liable for the crime of attempted homicide and not merely for slight physical injury.

Anent the issues raised by petitioner Bautista, We note that they involve questions of fact, namely: whether or not he shot the victim and whether or not he was present at the inception of the shooting incident -- which this Court will not ordinarily review. Except in criminal cases in which the penalty imposed is reclusion perpetua or higher, appeals to the Supreme Court are not a matter of right but of sound judicial discretion, allowed only on questions of law which must be distinctly set forth in the petition for review on certiorari, and only when there are special and important reasons therefore.[19]

Petitioner invokes the exceptions that the findings of respondent court is grounded on speculations, surmises or conjectures,[20] that the judgment is based on a misapprehension of facts,[21] and that there was grave abuse of discretion[22] to justify a review of the findings of facts of respondent court.

Petitioner Bautista primarily decries the fact that the respondent court as well as the trial court did not give weight to the negative results of the paraffin test to which he was subjected to nine (9) hours after the shooting and instead indulged in speculations, surmises and conjectures when they concluded that "many things had happened between the shooting and the time Bautista was subjected to paraffin test"[23] He contends that the supposition of the respondent court that the petitioner being a policeman must be aware that gunpowder can be easily removed by washing the hands with vinegar, or even with soap and water and knowing such must have done so, was totally unfounded and unsupported by evidence.

However, an examination of the records reveals that there are other circumstances upon which the respondent court based its conclusion that petitioner Bautista fired his gun, thus -

"a) The ballistics results show that the gun of appellant Bautista was newly oiled. Specifically the finding was that it has "traces of thick oil." Appellant Bautista failed to refute the prosecution evidence that his gun at the time of his examination in the morning of March 23, 1972, was newly oiled. Neither did he explain the presence of thick oil in his gun. His obvious purpose of oiling his gun is to remove traces of gun powder.

"b) The ballistics test itself shows that one chamber in the gun of Bautista was found to have smoke rings. Smoke rings, according to the testimony of the ballistics expert, appears in the chamber of a revolver whose bullet was fired. Only one chamber had smoke rings. The other five chambers do not have any. This shows that appellant Bautista fired only one shot which is in accordance with the testimony of the witnesses for the prosecution. The lame explanation of Bautista that the said smoke ring is attributable to the fact that in the month of February he participated in quelling student demonstrations, fails to explain why, despite the fact that his gun is newly oiled, said smoke ring was still present at that time. The obvious conclusion is that because he was racing against time, Bautista forgot, in his desire to exculpate himself, to clean the inner chamber of his service revolver." [24]

These circumstances are nevertheless of no moment because of the positive identification of petitioner Bautista as the person who shot the victim by the prosecution witness Eduardo Saguil. Petitioner, however, discounts the testimony of Saguil for the reason that he gave two (2) conflicting statements - one before the Manila Metropolitan Police (MMP) given on March 23, 1972 wherein he failed to identify the person who fired the fatal shot and the other before the National Bureau of Investigation (NBI) on March 24, 1972 wherein he identified petitioner as the assailant.

This apparent inconsistency in the statements of Saguil was satisfactorily explained at the trial during his direct and cross examinations. He testified that he had no choice but to sign the sworn statements given before the MMP because he was intimidated by the investigating officers who did not want him to implicate petitioner Bautista as the person who shot the victim since petitioner was their comrade. In fact, when he insisted that it was Bautista who shot the victim, the investigating officer Rolando Atanacio stopped the taking down of the statement and instead indicated therein that Saguil refused to continue with the same. It is for this reason that Saguil together with another prosecution witness Jaime Roque decided to proceed to the NBI to give another sworn statement this time disclosing the whole truth.

Petitioner Bautista deplores the fact that the respondent court chose to give full credence to the testimony of Roque placing the former at the scene of the incident prior to the actual shooting and disregarded his version that he merely responded to the crime scene as police officer after he heard the shots coming from the Sands Kitchenette.

Roque affirmatively identified petitioner Bautista as the person who, during the confrontation pushed the victim on the shoulder making him spin. Petitioner Bautista on the other hand, alleged that he was in the vicinity of the crime scene that night of March 22, 1972 because he conveyed his compadre Arsenio Sanchez whom he accidentally met to take a ride for La Loma. However, Sanchez was never presented as a witness to corroborate this claim of petitioner. The trial court properly observed that the non-presentation of Sanchez is an evidence wilfully suppressed which if presented will be adverse to Bautista. [25]

Petitioner Bautista also capitalizes on the failure of Roque to identify him and his co-accused in his sworn statement given before the NBI on March 24, 1972. This failure is explained by the fact that at the start he did not know their names, but merely recognized their faces. It was only when the pictures of the accused were shown that he came to know of their names.

We sustain the trial court's conclusion on the credibility of the prosecution witnesses Saguil and Roque,[26] as it is in a better position to decide the question, having seen and heard the witnesses themselves and observed their behavior and manner of testifying.[27] The impressions of the court a quo on this matter is binding upon Us unless there appears a grave abuse of discretion or an obvious misapprehension of facts.[28] The trial court noted that "no evil or bad motive was shown to have existed before the incident which would prompt Roque and Saguil to testify in the manner they did if such were not the fact." [29] The absence of evidence as to an improper motive actuating the principal witnesses of the prosecution strongly tends to sustain no improper motive existed and their testimony is worthy of full faith and credit.[30] Hence, the positive testimony of the prosecution witnesses that he was at the crime scene at the inception of the incident and pointing to him as the person who confronted and last shot the victim together with all the attendant circumstances cannot be overcome by the mere denials of petitioner Bautista.[31]

As We uphold the factual findings of the respondent court, We therefore rule that petitioner should be held liable for the death of the victim by inflicting the fatal wound upon him.

WHEREFORE, the decision of the Court of Appeals dated February 20, 1976 affirming with modification the decision of the trial court dated August 20, 1973 is hereby **AFFIRMED** as to the conviction of Benjamin Bautista y Mendoza for homicide, and **MODIFIED** as regards Eliseo Araneta, Jr. y Macute, who is hereby found guilty beyond reasonable doubt of the crime of attempted homicide penalized under Article 249 in relation with Article 51 of the Revised Penal Code, and considering the mitigating circumstance of voluntary surrender without any other attendant circumstances, petitioner Araneta, Jr. is imposed the penalty of imprisonment for ten (10) months of prision correccional.

The civil indemnity for the death of Manuel Esteban, Jr. is hereby increased from P12,000.00 to P30,000.00 in line with prevailing jurisprudence.

Benjamin Bautista is ordered to pay the heirs of the deceased the damages as herein modified.

SO ORDERED.

Narvasa, Acting C.J., (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Pages 33 to 102, Rollo - G.R. No. L43745, Penned by Judge Manuel Pamaran.

[2] Pages 24 to 41, Rollo - G.R. No. L-43527, Associate Justice Vicente G. Ericta, ponente. Concurred in by Associate Justices Luis B. Reyes and Pacifico P. de Castro.

[3] Pages 2 & 3, Rollo - G.R. No. 43527.

[4] Page 13, Rollo, G.R. No. L-43745.

[5] *People vs. Yuman*, 61 Phil. 786 (1935); *People vs. Apolinario*, 58 Phil. 586 (1933)

[6] *People vs. Pasco, Jr.*, 137 SCRA 137 (1985); *People vs. Crisostomo* 108 SCRA 288 (1981); *People vs. Alconga and Bracamonte*, 78 Phil. 366 (1947).

[7] *U.S. vs. Guy-Sayco*, 13 Phil. 292 (1906).

[8] *People vs. Pasco, Jr.*, *supra*.

[9] *People vs. Urbistondo*, 132 SCRA 268 (1984); *People vs. Plandez*, 132 SCRA 69 (1984); *People vs. Dofilez*, 130 SCRA 603 (1984); *People vs. Libardo*, 127 SCRA 541 (1984); *People vs. Talaboc, Jr.*, 30 SCRA 87 (1969);

- [10] People vs. Crisostomo, supra, People vs. Urbistondo, supra; People vs. Dofilez, supra; People vs. Talaboc, Jr., Supra; People vs. Ansoyon, 75 Phil. 772 (1946).
- [11] Exhibit D.
- [12] Ibid.
- [13] Indicated in the Morgue Form, Exhibit B.
- [14] People vs. Abarintos, 81 Phil. 238 (1948); People vs. Tamayo, et al., 44 Phil. 38 (1922).
- [15] People vs. Bautista, 30 SCRA 158 (1969); People vs. Tividad 20 SCRA 549 (1967); People vs. Portuguesa, 20 SCRA 901 (1967).
- [16] People vs. Tividad, Supra.
- [17] People vs. Portuguesa, supra.
- [18] U.S. vs. Abiog and Abiog, 37 Phil. 137 (1917).
- [19] Balde vs. Court of Appeals, 150 SCRA 365 (1987).
- [20] Republic vs. Court of Appeals, 132 SCRA 514 (1984); Director of Lands vs. Court of Appeals, 117 SCRA 346 (1982); Joaquin vs. Navarro, 93 Phil. 257 (1953).
- [21] Republic vs. Court of Appeals, supra; Director of Lands, supra.
- [22] Republic vs. Court of Appeals, supra; Buyco vs. People 95 Phil. 453 (1954); Director of Lands vs. Court of Appeals, supra.
- [23] Page 15, Decision of the Court of Appeals.
- [24] Pages 15-16, Decision of the Court of Appeals.
- [25] Rule 131, Sec. 5(e), Rules of Court.
- [26] People vs. Ganduma, 160 SCRA 799 (1988); People vs. Alison, 122 SCRA 9 (1982); People vs. Chavez, 121 SCRA 806 (1983); People vs. Salameda, 111 SCRA 405 (1982); People vs. Lacson, 102 SCRA 457 (1981).
- [27] People vs. Ancheta, 148 SCRA 178 (1987); People vs. Cabiling, 74 SCRA 288 (1976).
- [28] People vs. Ancheta, supra.
- [29] Page 57, Decision of the Circuit Criminal Court, page 89 Rollo - G.R. No. L-43745.
- [30] People vs. Angeles, 92 SCRA 432 (1979); People vs. Mercado, 38 SCRA 168 (1971); People vs. Amiscua, 37 SCRA 813 (1971).
- [31] People vs. Parilla, 144 SCRA 454 (1986); People vs. Canada, 144 SCRA 121 (1986); People vs. Chavez, 117 SCRA 221 (1982).

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