

JESUS SIERBO, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND NEGROS NAVIGATION CO., INC., RESPONDENTS.

G.R. No. L-42630. June 29, 1982

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a petition treated as a special civil action to review on certiorari the decision of the Workmen's Compensation Commission dated December 22, 1975 in WCU Case No. 15155 which reversed the award made by the Acting Referee of the Workmen's Compensation Unit, Regional Office No. 7, Iloilo City, in favor of herein petitioner Jesus Sierbo.

It is not disputed that petitioner was employed by private respondent as Chief Steward in its vessel M/V "Don Vicente". Petitioner was in charge of the preparation and serving of food to the passengers of the vessel, and was under the immediate supervision of the Chief Mate, the Second Mate and the Port Officer. Sometime between 6:30 and 7:30 in the morning of June 6, 1971, petitioner Sierbo was reprimanded by Second Mate Hernani Magbanua for having reported to work late and for not being in uniform. They exchanged words and quarrelled, and both sustained gunshot injuries. Magbanua died before he could be brought to the hospital. The report on the autopsy performed on his cadaver show these injuries:

"HEAD & NECK.

1. Multiple petechial burn, 2 x 6 cm. left antero lateral side of the neck.
2. Multiple petechial burn, 2 x 3 cm. with blood oozing over the anterior right base of the neck.
3. Powder burn, 3.5 x 6 cm. extending from the mid supra sternal notch to the medial half of the clavicle.

Thoraco-Abdominal Region.

1. Bullet wound, 4 mm. in diameter, with abrasion collar 6 mm. in diameter, more on its supero lateral edge, over the 1st intercostal space, left para sternal line, penetrating, perforating, through and through, the superior vena cava, medial aspect, middle right lung, inferior lobe right lung, with the slug lodging and extracted at the 6th intercostal space, posterior axillary line, with fracture of the superior edge of the 7th rib. The direction of wound is left to right downward, posteriorly. About three (3) liters of blood was extracted from the thoracic cavity.
2. Bullet wound, 4 mm. in diameter, over the 7th I.C.S. with abrasion collar, 8 mm. in diameter, more on its supero medial edge left anterior axillary line, penetrating, causing hematoma of the anterior edge lower lobe, left lung, perforating through and through the anterior aspect, left diaphragm, lacerating the lateral edge left lobe of the liver, perforating the posterior left diaphragm, posterior aspect, lower lobe, left lung with the slug lodging and extracted at the 10th I.C.S. with fracture of the lower edge of the same rib, about 3 inches from the mid vertebral line, left. The direction of the wound is antero posteriorly slightly medial. About one (1) liter of

blood was extracted from the abdominal cavity.

Extremities.

1. Bullet wound, through and through, 4 mm. in diameter, with powder burn, 2 cm. in diameter, over the postero medial upper 3rd, left forearm, 5 cm. below the elbow with exit wound, 6 mm. in diameter, 3 cm. above the point of entry at the medial aspect of the left forearm.
2. Powder burn, petechial in appearance, 7 x 8 cm. in length, over the left cubital fossa.
3. Powder burn, petechial in appearance, 3 x 8 cm. in diameter, distributed from the medial aspect, left palm to the lower 3rd of the left forearm.
4. Bullet wound, 4 mm. in diameter, with powder burn 2 cm. in diameter at the distal joint palmar aspect, 2nd finger right, with point of exit, 1 cm. away from the point of entry at the medial side of the same finger.
5. Abrasion, 1 cm. in size, 2 in number, dorsal proximal point, 2d finger, left.

Cause of Death.

Shock, secondary to hemorrhage, due to multiple bullet wounds."[1]

Petitioner Sierbo, on the other hand, was found to have sustained the following injuries:

- "1. Bullet wound, 3 mm. in diameter, at the level of right posterior iliac crest, about 2 inches from mid line, penetrating with multiple perforation of the ilium, cutting completely the right ureter, perforating through and through duodenum, left lobe of liver and slug was recovered at left upper abdominal cavity. The direction of wound from right to left upward.
2. Hematoma, right parietal region, yellowish in color, about 2-1/2 inches above the right ear, 1-1/2 inches in diameter.
3. Lacerated wound, inner aspect, right upper lip with whitish tissue debris about 1 cm. long.

Prognosis - Guarded."[2]

In connection with the death of Hernani Magbanua, private respondent filed an "Employer's Report of Accident" with the Workmen's Compensation Unit, manifesting that it would not controvert a claim for compensation,[3] and accordingly paid P5,400.00 for death compensation and burial expenses conformably with the award of the Workmen's Compensation Unit.[4]

As to the injuries sustained by Jesus Sierbo, private respondent filed another "Employer's Report of Accident" stating that it would controvert a claim for compensation, describing the incident thus: "While on board the M/V 'Don Vicente', subject employee assaulted and with his revolver inflicted several gunshot wounds on Ernani Magbanua, the vessel's 2nd Mate Officer, who was then unarmed, but who in the ensuing struggle and before his death succeeded in wresting possession of said firearm which he used to shoot and wound the former."[5] The Acting Referee of the Workmen's Compensation Unit conducted hearings on this controverted claim and evidence was adduced by petitioner-claimant as well as private respondent. Eventually, a decision was rendered in favor of the compensability of petitioner Sierbo's claim.

According to the Decision of the Acting Referee, Sierbo's version of the incident is as follows: On the day in question, he reported for work at around 6:30 in the morning and immediately proceeded to the kitchen of the M/V "Don Vicente" to supervise the preparation of sandwiches for the vessel's canteens. He stayed in the kitchen for about five minutes. While there, he was approached by Second Mate Hernani Magbanua and scolded for

having arrived late. Petitioner apologized and tried to explain that it was only 6:30 by his watch but Magbanua insisted that it was already 7:00 o'clock according to the boat's wall clock. Petitioner then went out of the kitchen to change into his uniform which was inside his locker located somewhere between the dining rooms of the officers and crew. When he was about five meters from Magbanua, the latter followed and continued berating petitioner for his tardiness that morning. With his back to Magbanua and about six meters away from the kitchen, petitioner felt something hard hit him on the left part of his head near his ear. He staggered and almost fell down. He turned and saw Magbanua holding a Coca-Cola bottle with his upraised hand and about to deliver another blow. It was at this instant that petitioner with his Cal. 22 Magnum revolver shot Magbanua who was hit at the left breast. Petitioner continued to shoot Magbanua. The latter dropped the softdrink bottle but was able to grapple with petitioner for the possession of the gun. They both fell to the floor. By this time, many persons had gathered around them and petitioner heard the voice of Mr. Antonio Hechanova, Executive Vice-President and General Manager of private respondent, shouting to him (petitioner) to stop grappling with Magbanua. Petitioner obeyed, loosened his hold on the revolver, freed himself, stood up, and fled. As he was running, he heard a shot and felt something hit him at the right buttock. He turned and saw Magbanua holding his (petitioner's) gun. Petitioner left the boat, hailed a taxicab, and proceeded to the PC Headquarters to report the incident. Later, he was brought to the St. Paul's Hospital for treatment.[6]

Private respondent, on the other hand, presented as its own witnesses, among others, persons who were in the vessel when the shooting incident occurred. In the Acting Referee's Decision, the testimonies of said witnesses are set forth, thus:

Eliodoro Sina-an, Boatswain Mate of M/V "Don Vicente", testified that he reported for work at 5:30 in the morning of June 6, 1971. He was somewhere in the car-space of the boat arranging the cargo when he heard the shots. He ran towards the direction of the shots and heard 2 more shots. In the deck floor, he saw Second Mate Magbanua in the act of rising, holding a revolver in his hand, with his breast smeared with blood. Sina-an took the gun and helped Magbanua to a chair, then later helped carry him to a car. Before the shooting, Sina-an saw petitioner being scolded by Magbanua for arriving late and for not being in uniform. The car-space where this witness was at the time of the shooting was about 40 feet from the place of shooting which was not visible to him as there were partitions in between.[7]

Antonio Hechanova, Executive Vice President and General Manager of private respondent, testified that it was his customary practice and almost daily routine while he was in Iloilo to conduct inspections of the ships of the company in port and have morning coffee in the mess hall of the vessel. On that fateful morning of June 6, 1971, he boarded the M/V "Don Vicente" at about 6:15 o'clock. He was having coffee in its mess hall with several others when he saw Second Mate Magbanua reprimanding petitioner for being late and pointing to the clock which said that it was already 7:00 o'clock. Petitioner insisted that it was only 6:30 o'clock. Petitioner and Magbanua went out of sight from the mess hall then later, witness Hechanova heard 2 shots, followed by 3 more shots. Hechanova and his companions rushed outside the mess hall and saw Magbanua flat on his back with blood in his body, grappling with petitioner who was on top of Magbanua, and holding a gun. Hechanova shouted at petitioner to stop but the latter did not immediately comply, so he (Hechanova) dealt petitioner with a fist blow on the head. The grappling still continued, then Dr. Jaen, physician of the vessel, hit petitioner with the butt of his (Jaen's) pistol, and that was the only time that petitioner released his hold on the gun and ran away. Magbanua took possession of petitioner's gun and fired at petitioner. Because he was in the line of fire, witness Hechanova dove to avoid getting hit and ran for cover.[8]

Romeo Ampig, mess boy, testified that around 7:00 o'clock on that fatal morning, he went out of the car-space (of the vessel) and saw Magbanua pointing his right index finger at petitioner. The latter then pulled a gun from his

waist. Upon seeing this, witness Ampig ran to the second deck and stayed there. When he returned to the scene of the quarrel, many persons had already gathered.[9]

Dr. Noe Jaen, physician assigned to the M/V "Don Vicente", testified that at around 7:00 o'clock in the morning of June 6, 1971, he was dressing up in his cabin. He heard 3 shots so he took his pistol, tucked it in his waist, and went out. Passengers were in a commotion, and he went down to the first deck. He saw Magbanua lying on his back with petitioner on top of him. They were grappling for the possession of the gun which petitioner was then holding. After other persons in the scene had been unable to separate the protagonists, witness Jaen took out his pistol, held it by the nozzle, and hit petitioner on the head. Petitioner jerked from the blow, stood up, then ran away. Jaen heard a shot coming from the place where Magbanua was lying down and when he (Jaen) turned to look, he saw Magbanua holding the gun.[10]

Not touching directly on the shooting incident in question, more witnesses testified for private respondent. The gist of their testimony is stated in the decision of the Acting Referee, thus:

Isidro Sumagaysay, Assistant Chief Steward, testified that on the day before the shooting incident, or on June 5, 1971, at around 5:00 to 5:30 o'clock in the afternoon, at the mess hall, he was told by petitioner Sierbo to report the following morning at around 6:00 o'clock in accordance with the orders of the Second Mate. Upon arriving at the M/V "Don Vicente" the next day, he asked the permission of Chief Mate Virgilio Villagrancia to go to the M/V "Doña Florentina". When he returned to the M/V "Don Vicente", he saw Second Mate Hernani Magbanua already being carried to a waiting taxi.[11]

Gil Sisnorio, a messboy, testified that he reported for work at 5:00 o'clock in the morning of June 6, 1971 and that he saw petitioner Sierbo arrive past 6:00 o'clock. Sierbo was inside the kitchen talking to Magbanua who was outside the kitchen door and around 4 meters away.[12]

Considering the foregoing testimonies and the other evidence presented by the parties, the Acting Referee in his Decision of March 4, 1974 stated that "no one has ever testified fully and sufficiently to the fact that the claimant herein was the unlawful aggressor," and ruled that it was the deceased Second Mate Magbanua who "provoked the incident by verbal bickering and criticism of Sierbo for having arrived late x x x aggravated further when he attacked and hit Sierbo on the head with a bottle of Coca-Cola. This final act of unlawful provocation and assault made the deceased Magbanua as the unlawful aggressor, and Sierbo just acted in defense of his person or right against said unlawful aggression. In other words, Sierbo was just acting in self defense."[13]

At this point, it is pertinent and relevant to quote hereunder the gist of the version of the petitioner when he testified on April 2, 1974 in Criminal Case No. 1007 entitled "People vs. Jesus Sierbo" when he was charged for the death of Magbanua:

"Shorn of details, the version of claimant in the criminal case of the incident of June 6, 1971 wherein he was wounded and Magbanua killed, is as follows: After he was scolded by 2nd Mate Ernani (or Hernani) Magbanua for arriving late for work that morning of June 6, 1971, claimant left the kitchen located at the first deck of the M/V "Don Vicente" for the purpose of getting into his uniform as the vessel's Chief Steward. He had negotiated the first step of the stairway leading to the second deck and was about to take the second step when he was hit on the left side of the head by a hard object. He then inclined towards the right and almost fell but was able to cling to the stairs' railing. Whereupon, he drew his .22 caliber Magnum revolver, turning towards his right side, but was shot from behind by Magbanua whom he saw holding a gun. Magbanua's shot hit claimant at the right buttock. Claimant then jumped at Magbanua and before both actually fell to the floor, claimant fired a shot at Magbanua at close range. Magbanua fired another shot but missed as claimant parried aside the barrel of his gun. After claimant and Magbanua jumped at each other, claimant again shot Magbanua who was holding claimant's right hand. When both fell, Magbanua was with his back against the floor with

claimant on top of him. All in all claimant fired his revolver three (3) times. While on the floor on top of Magbanua, claimant felt the presence of Mr. Antonio Hechanova (Executive Vice President and General Manager of the respondent Company). Claimant was in the act of standing when he heard the voice of Hechanova: 'Jesus, that is enough now'. At that moment, Magbanua was lying on the floor with face upward, no longer moving and as if already dead. In standing up, claimant was holding his firearm. After standing up and was about to leave he heard gunshot. Before claimant left Hechanova called him and told him to surrender his firearm which he did surrender to the men who approached him. After surrendering his firearm, claimant ran away and left the vessel. (Annex "2-A", pp. 7-25)."[14]

On appeal of the Referee's Award, the Workmen's Compensation Commission in its Decision of December 22, 1975 reversed the decision of the Acting Referee and absolved private respondent Negros Navigation Co., Inc. from liability, holding thus:

"x x x it is clear that it was not the deceased but the claimant who was the un-lawful aggressor and, therefore, the latter is not entitled to the benefits provided for by law. This is so, because claimant's unlawful aggression takes his case out of the purview of the Workmen's Compensation Act."[15]

Against the foregoing decision of the Workmen's Compensation Commission, herein petitioner Jesus Sierbo in his Brief raises the following issues:

1. In that incident of June 6, 1971, which resulted in the death of Hernani Magbanua, who was the aggressor?
2. Considering the factual circumstances under which the petitioner suffered injuries, is he entitled to compensation?
3. Did the Workmen's Compensation Commission, in reversing the decision rendered by the Workmen's Compensation Unit at Iloilo City, act in accordance with the facts and established jurisprudence?

So many times has this Court had the occasion to reaffirm the presumption of compensability of illness, injury or death under the Workmen's Compensation Act, and the corresponding burden of the employer to over-throw that presumption with substantial evidence of non-work connection or non-work aggravation.[16] In the instant case specifically, absolution from liability is sought by respondent employer on the basis of Section 4(1) of the Workmen's Compensation Act, as amended, which provides that:

"Sec. 4. Injuries not covered. - Compensation shall not be allowed for injuries caused (1) by the voluntary intent of the employee to inflict such injury upon himself or another person x x x." (Underscoring supplied.)

It can hardly be debated that the aforequoted provision covers a situation where the employee unlawfully assaults or inflicts injury upon another person, and is himself injured in the course of an ensuing struggle. The injuries sustained by the employee are not compensable. The rationale for this exception is patent and obvious. It was not intended for the beneficent and altruistic provisions of the workmen's compensation law to hold an employer liable for whatever harm that may befall his employee as a consequence of the latter's own wilful and felonious intent to injure another. One who initiates an unlawful aggression should expect to be injured, either by his victim, who will act in retaliation or to protect himself under the instinct of self-preservation, or by a third person, who might lawfully come to the defense of the victim. The unlawful aggressor not only voluntarily exposes his person to physical harm. He likewise acts in direct violation of the law.

In the instant case, petitioner insists that he was not the unlawful aggressor. We shall consider this allegation.

Unlawful aggression is equivalent to an attack.[17] And in the case at bar, the record indisputably establishes, and petitioner affirms the fact, that he shot Magbanua several times. Shooting a person is, without doubt, an attack.

Petitioner, however, alleges that he shot Magbanua because the latter hit him first. In other words, it is the

contention of petitioner that his act of shooting Magbanua cannot be an unlawful aggression as he acted in self-defense against a prior attack by the deceased. This case, therefore, boils down to the factual issue of whether or not there was such a "prior attack" by the late Magbanua. In this regard, respondent Workmen's Compensation ruled as follows:

"As can be gleaned from the records of the case, the claimant was scolded by Hernani Magbanua, the second mate, for his having arrived late in the vessel in the morning of June 6, 1971. The act of Magbanua in reprimanding the claimant was within bounds as it was part of his job to supervise the work and control the excesses of his subordinates. Under the circumstances, it was claimant who had resentment in his heart at that time. Thus, his allegation that it was Magbanua who provoked their fight by hitting him with an empty bottle of coca-cola on his head is not worthy of belief. In fact, there is not a single evidence showing the circumstances that could have forced Magbanua to perform the alleged drastic act. On the contrary, there is every reason to believe that the claimant could have been irked by the continued berating of Magbanua. For this reason, we are inclined to give credence to respondent's allegation that the claimant assaulted and inflicted with his own revolver gunshot wounds on the second mate; that despite his wounds the latter was able to grapple and wrest the .22 cal. Magnum revolver from the claimant; and when the firearm was already in Magbanua's possession, he was able to shoot and wound the claimant." [18]

The rule is now well-settled that findings of fact by the Workmen's Compensation Commission are final and conclusive, unless there is a clear showing of grave abuse of discretion, or said findings find absolutely no support in the evidence on record, or are unsupported by substantial or credible evidence. [19] The onus is therefore upon herein petitioner to prove to this Court that at this instance, the findings of fact of respondent Commission are bereft of evidentiary support.

To be sure, petitioner contends that the finding of the Workmen's Compensation Commission "that it was not the deceased but the claimant (petitioner) who was the unlawful aggressor" is not supported by, but rather contrary to, the evidence adduced by the parties. It is alleged that "despite the numerous witnesses presented by the private respondent, careful perusal of their respective testimonies will show that no one was an eyewitness to the shooting incident, the sole direct testimony thereon being that of the petitioner, Jesus Sierbo" who testified that it was the deceased Magbanua who assaulted and hit him on the head for which reason he was constrained to act in self-defense. [20] Private respondent, however, effectively and sufficiently defeats petitioner's contentions by quoting in its Comment from the transcript of stenographic notes, more particularly from the testimony of witness Romeo Ampig, thus:

"Q Now, when you went out of this car space particularly through Exhibit '4-7', on that morning, June 6, 1971, could you please tell the Investigator if you saw anybody?

A Yes.

Q Whom did you see?

A I saw Sierbo and Magbanua. (t.s.n., Apalacio, p. 289, Oct. 26, 1973)

x x x x

Q Now, at the time when you saw Hernani Magbanua according to you with his back towards you, what was Hernani Magbanua doing?

A Hernani Magbanua was pointing his right index finger towards Jesus Sierbo.

Q And at that time how far was Hernani Magbanua from Jesus Sierbo as indicated in this Exhibits '4-G' & '4-H'?

A About 5 or 6 feet.

Q Now what else happened after that?

A Sierbo pulled something which I do not know what it was but probably it was a gun because it exploded. (t.s.n., Apalacio, p. 291, October 26, 1973).

Q Now when you heard that shot, were you able to see Magbanua?

A I saw Magbanua seems to whirl. (sic.)

Q Towards what direction?

A Towards the left.

Q And after that what did you do?

A I then ran up towards the second deck.

x x x x

Q Now, Mr. Ampig, Mr. Sierbo testified here that he shot Mr. Magbanua because he was hit by Mr. Magbanua with a bottle of coca cola on his head. What can you say to that testimony?

A That is a lie because there was none.

Q Now, at the time you saw Mr. Magbanua with his back turned towards you, will you please tell the Investigator whether you noticed whether there was a coca cola bottle that he was holding?

A There was none. (t.s.n., Apalacio, pp. 292-293, October 26, 1973).

Q Now, you said you saw Magbanua pointing his right index finger towards Sierbo. That was what you saw?

A Yes, sir.

Q You did not hear any word uttered or spoken by Magbanua?

A No, sir, because the engine was functioning, and it was noisy. (t.s.n., Apalacio, pp. 303-304, October 26, 1973; x x x.)"[21]

The foregoing testimony clearly and completely belies petitioner's claim that private respondent company failed to present an eyewitness to the incident. More than that, Ampig's declaration directly contradicts petitioner's allegation that the deceased Magbanua was holding a softdrink bottle at the time of the quarrel and that it was Magbanua who initiated the physical assault by hitting petitioner on the head with that bottle.

Credibility of witnesses is not for this Court to pass upon, for as stated earlier, We need only to determine whether or not the findings of fact of respondent Commission are supported by substantial evidence. However, even if We were to go into the issue of credibility, as between witness Romeo Ampig and petitioner Sierbo, the doctrinal rules would require Us to give less weight to the testimony of the latter. If there are irreconcilable conflicts in the statements of witnesses, one of the factors which the court may take into consideration is the witnesses' motives to speak the truth or swear to a falsehood.[22] Thus, the self-serving assertions of petitioner cannot prevail over the positive and categorical testimony of private respondent's witness Romeo Ampig.[23]

Petitioner next poses the question: Assuming *arguendo* that it was he who initially shot the late Magbanua, how come that he sustained a lacerated wound in the head? Petitioner argues that since the injury could hardly be considered self-inflicted, the only logical explanation is that it was inflicted by Magbanua when petitioner had his

back turned and before he shot the former.[24]

The contention is not meritorious. Firstly, the Medical Certificate[25] on record shows that the lacerated wound found to have been sustained by petitioner was located in the "inner aspect" of his "right upper lip". The location of this wound makes it highly unlikely that it was inflicted by the deceased Magbanua in the manner claimed by petitioner. It is alleged that petitioner's back was turned when Magbanua hit him with a softdrink bottle, but it is inconceivable how in this position, Magbanua could or would strike petitioner somewhere in the front particularly the lip. The more probable target would have been the back or at least the side of petitioner's body.

Secondly, the Medical Certificate abovementioned does not show that petitioner sustained a lacerated wound on the part of the head where he would most likely have been hit by Magbanua. It was not a lacerated wound, but a hematoma, found on the "right parietal region x x x about 2-1/2 inches above the right ear, 1-1/2 inches in diameter." [26] The record provides the explanation for this hematoma. Witness Antonio Hechanova testified that he saw Dr. Noe Jaen hit Sierbo with the butt of his (Jaen's) pistol in an effort to stop the fight between Sierbo and Magbanua who were then already grappling with each other. Dr. Jaen himself testified and confirmed that he hit Sierbo on the head with his pistol.

Petitioner denies the presence of Hechanova and Jaen in the place where the incident happened by referring to the testimony of private respondent's witness, Eliodoro Sina-an, that when he rushed to the scene of the shooting after he heard gun shots, he saw only the wounded Magbanua then in the act of rising with a gun in his hand and he (Sina-an) assisted Magbanua to a chair.[27] This, however, is a trivial matter that can be easily explained and reconciled with the testimony of Hechanova who declared that he ran for cover to avoid getting hit when Magbanua fired at petitioner. It is not unreasonable to surmise that the others present also scampered away for cover and safety.

Petitioner further contends that from the evidence of private respondent, it would appear that there were two (2) stages of the incident, the first culminating in the petitioner shooting Magbanua, and the second, separated from the first by the alleged arrival of Jaen and Hechanova, was after petitioner had ran away and he was shot by Magbanua. Petitioner argues that assuming he was the aggressor in the first stage, such aggression ended during the intervening period during which he released the gun and ran away. Thus, when petitioner was injured during the second stage when he was no longer the aggressor and thus Magbanua had no longer to act in self-defense, petitioner should be compensated for his injuries.

The case of *People vs. Alconga, et al.* (78 Phil. 366) cited by petitioner, however, is inapplicable. In *Alconga*, this Court held thus:

"x x x there were two stages in the fight between appellant and the deceased. The initial stage commenced when the deceased assaulted appellant without sufficient provocation on the part of the latter. Resisting the aggression, appellant managed to have the upper hand in the fight, inflicting several wounds upon the deceased, on account of which the latter fled in retreat. From that moment there was no longer any danger to the life of appellant who being virtually unscathed, could have chosen to remain where he was.

"x x x when he pursued the deceased, he was no longer acting in self-defense, there being then no more aggression to defend against, the same having ceased from the moment the deceased took to his heels." (p. 369)

The issue in said case was whether or not therein accused *Alconga* was still acting in self-defense at the second stage of the fight for the purpose of determining his guilt of the crime charged. In the instant case, on the other hand, We are not here concerned with whether or not the deceased Magbanua was acting in self-defense during the alleged second stage of the incident, for Magbanua was already mortally wounded by the petitioner who

himself began the unlawful aggression by shooting and wounding Magbanua. Magbanua is not the accused unlike the defendant Alconga in the cited case. The issue at bar is whether or not herein respondent-employer should be held liable for the injuries sustained by petitioner-employee who, as earlier stated, has been found to have initiated the aggression. In other words, it is not material that the quarrel between petitioner and Magbanua could really be divided into two stages since the incident was a continuous fight. The fact need only be established by substantial evidence that it was petitioner who commenced the assault and, therefore, should not be entitled to compensation.

It is claimed by petitioner that because of the comparative rank held by him and the deceased Second Mate in the personnel hierarchy of private respondent company, he of the lower rank would have been more likely to give in to the deceased who was of the higher rank. Hence, it is allegedly more reasonable to surmise that it was the deceased Magbanua who delivered the first blow, irked as he was and feeling slighted when petitioner, after apologizing for having arrived late and explaining that it was only 6:30 o'clock in the morning by his watch, left him (Magbanua) in the vessel's kitchen, thereby indicating that he wished the matter to be terminated.

We do not agree. We sustain respondent Commission's observation that Magbanua had no reason to commit the alleged drastic act of hitting petitioner on the head with an empty bottle. The Second Mate acted perfectly well within the bounds of his authority in reprimanding petitioner for his tardiness. While it is probable that Magbanua scolded more than what was necessary or reasonable under the circumstances, We do not deem such actuation as sufficient provocation for petitioner to shoot him at least four times, thus wounding him mortally.[28]

There is evidence to show that petitioner was in an angry and belligerent mood on the day immediately preceding the fatal incident, resolving to defy the order of Second Mate Hernani Magbanua to report at 6:00 o'clock the next morning, and likewise, that petitioner was a picture of one ready to fight and to use his gun on the day itself of the shooting. We quote excerpts from the testimonial evidence of:

Witness Isidro Sumagaysay:

"Q Now at that time when Jesus Sierbo told you that you and Jesus Sierbo were to report at 6:00 o'clock the following day, did you notice anything in the actuation of Jesus Sierbo?

A I noted that Jesus Sierbo was angry and he said that he would defy ('bali-on niya') the order of the Second Mate.

Q Now aside from the fact that Jesus Sierbo said that he would defy this order, what made you say that Jesus Sierbo was angry?

A Because the anger could be seen from his face and he kept holding the butt of his revolver which was tucked on his waist.

Q Now after Jesus Sierbo told you about this and after you told him just to take it easy and let's just follow the commands of our higher ups, what did Jesus Sierbo do?

A Nothing more, he left. (t.s.n., Apalacio, pp. 137-138, May 17, 1973 x x x.)[29]

Witness Gil Sisnorio:

"Q Now, according to you after Hernani Magbanua left, Jesus Sierbo also went out of the kitchen. What did Jesus Sierbo do when he went out from the kitchen?

A I saw Jesus Sierbo pulled out his gun from his waist, cocked the revolver and returned the revolver to his waist.

x x x x

Q Now, after Sierbo drew his revolver, cocked it and returned it to his holster at his waist, what else happened?

A Not long after that I heard two shots.

Q Where did the shots come from?

A From the other side of the hall of the kitchen.

x x x x

Q How many more shots did you hear?

A I just could not remember how many shots I heard. (t.s.n., Apalacio, pp. 214-215, September 7, 1973 x x x.)"[30]

We likewise find that the Autopsy Report on record (*supra*), the contents of which do not appear to be disputed, corroborates private respondent's version of the incident rather than that of petitioner. An examination of the post-mortem findings reveals that two of the bullet wounds found in the victim's body were not accompanied by powder burns. Medico-legally speaking, this indicates that the gun must have been fired from a distance of more than two (2) feet. "As the distance of the muzzle of the firearm increases, the burning, powder tattooing and smudging gradually diminish until (the same) disappear at a distance beyond twenty-four inches." [31] Petitioner's story is that he had to shoot in self-defense after the deceased hit him on the head with an empty bottle while his back was turned. We note that the deceased did not "throw" or "hurl" the bottle at petitioner but "hit" him with it, thus strongly implying that Magbanua held the bottle with his hand and "struck" petitioner on the head. If this were true, the gun would have been fired at a very close distance, proximate enough for the skin surrounding the bullet wounds to have powder burns. Still, this version of the petitioner contradicts his testimony at this trial in Criminal Case No. 1007 hereinbefore cited that he shot Magbanua because he was shot from behind at the right buttock by Magbanua whom he saw holding a gun.

In the last analysis, the findings of the Workmen's Compensation Commission that there was unlawful aggression on the part of the petitioner by shooting to death his superior, Second Mate Magbanua, and that petitioner suffered injuries occasioned by his wilful intent to bring about the injury and death of his superior, which findings being factual based on the reliability of the witnesses of private respondent and supported by substantial evidence, We are bound to accept said findings as final and conclusive. We find no abuse of discretion committed by the Commission.

WHEREFORE, the decision of respondent Workmen's Compensation Commission is hereby AFFIRMED. No costs.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Abad Santos, De Castro, and Escolin, JJ., concur. Aquino, J., in the result.

[1] Exhibits "3" and "3-A", Records, pp. 174-175.

[2] Exhibit "2", Records, p. 176.

[3] Exhibit "12", Records, p. 161.

[4] Exhibits "13", "14" and "14-A", Records, pp. 157-160.

[5] Records, pp. 1-2.

[6] Decision of the Acting Referee, pp. 2-4, Records.

[7] Ibid., pp. 8-9.

[8] Ibid., pp. 9-10.

[9] Ibid., p. 11.

[10] Ibid., p. 12.

[11] Ibid., p. 7.

[12] Ibid., p. 9.

[13] Ibid., pp. 15-16.

[14] Comment of respondent, Records, pp. 87-88.

[15] Decision of the Workmen's Compensation Commission, Rollo, pp. 42-44.

[16] *Malic vs. W.C.C. and Republic*, 93 SCRA 386, 390; *Larioma vs. Workmen's Appeal and Review Staff and Maria Cristina Fertilizer Corporation*, 93 SCRA 458, 460; *Cariño vs. W.C.C., et al.*, 93 SCRA 551, 556-558; *Faicol vs. W.C.C. and Republic*, 93 SCRA 811, 818-819; *Enriquez, Sr. vs. Republic, et al.*, 93 SCRA 836, 840-841; *De Zapata, et al., vs. W.C.C. and San Miguel Corporation*, 94 SCRA 303, 306; *De los Angeles vs. G.S.I.S. and E.C.C.*, 94 SCRA 308, 313; *Guzman vs. W.C.C. and Bago*, 95 SCRA 578, 581; *Villones vs. E.C.C., et al.*, 96 SCRA 111, 119; *Cabreira vs. W.C.C. and Repub-lic*, 96 SCRA 270, 272; *Del Rosario vs. W.C.C. and Luzon Stevedoring Corporation*, 96 SCRA 280, 282; *Caneja vs. E.C.C. and G.S.I.S.*, 96 SCRA 896, 900-901.

[17] *Castañares vs. C.A. and People*, L-41269-70, August 6, 1979, 92 SCRA 567, 576.

[18] Decision of the Workmen's Compensation Commission, pp. 2-3; Records, pp. 283-284.

[19] *Rio Y Compania vs. W.C.C., et al.*, 20 SCRA 1196, 1201, and cases cited therein. See also *Batangas Transportation Company vs. Perez and W.C.C.*, 11 SCRA 793, 798, and *Manila Railroad Company vs. Manalang and W.C.C.*, 15 SCRA 409, 413-414.

[20] Petition, pp. 7-9.

[21] Private Respondent's Comment, pp. 9-11; reiterated in Private Respondent's Brief and Memorandum, pp. 22-23.

[22] *Moran, Comments on the Rules of Court*, Vol. VI, 1980 ed., pp. 142-143, citing *U.S. vs. Lasada*, 18 Phil. 90.

[23] See *People vs. Molleda, et al.*, L-34248, Nov. 21, 1978, 86 SCRA 667, 697.

[24] Petition, p. 9; Brief for Petitioner-Appellant, p. 10.

[25] Exhibit "2", dated June 10, 1971, signed by Dr. Ricardo H. Jaboneta, Medico-Legal Officer of the Police Department of Iloilo City.

[26] A hematoma is classified as a superficial closed wound characterized by the "extra-vasation of blood in a newly-formed cavity."-Solis, Pedro P., *Legal Medicine*, 1964 ed., p. 179-181.

[27] Brief of Petitioner-Appellant, pp. 14-15.

[28] See Autopsy Report, *supra*.

[29] Comment of Private Respondent, p. 7.

[30] Ibid., p. 8.

[31] Solis, Legal Medicine, *supra*, p. 242.

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