

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. HERCULES DE LEON @ “ONDAT”, ACCUSED-APPELLEE.

Ponente: REYES, JR., J.C., J.

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REYES, JR., J.C., J.:

Before Us is an appeal of the Decision dated January 19, 2011 of the Regional Trial Court (RTC), Branch 8 of Manila, convicting accused-appellee Hercules de Leon @ “Ondat” of Reckless Imprudence Resulting in Homicide. The fallo of the assailed Decision reads:

“WHEREFORE, judgment is hereby rendered finding accused HERCULES DE LEON @ ONDAT GUILTY of RECKLESS IMPRUDENCE RESULTING IN HOMICIDE, under Article 365 of the Revised Penal Code and is accordingly sentenced to suffer an imprisonment of three (3) years and five (5) months. Accused is further ORDERED to pay the heirs of the victim Apolonio Vergara P51,906.05 as actual damages for the latter's death and P50,000.00 as civil indemnity.

SO ORDERED.” (Rollo, pp. 30-31)

The antecedents:

In an Information (Records, p. 1) dated May 24, 2007, accused-appellee Hercules de Leon @ “Ondat” (hereinafter accused-appellee) was charged with the crime of Murder. The accusatory portion of the said Information later docketed as Criminal Case No. 07254690 reads:

“That on or about July 16, 2006, in the City of Manila, Philippines[,] the said accused, did then and there willfully, unlawfully and feloniously, with intent to kill, with treachery and with evident premeditation, attack, assault and use personal violence upon one, APOLONIO VERGARA y VICTORIA, by then and there punching the latter on the face which caused him to fall and hit his head on the pavement, thereby inflicting upon the said Apolonio Vergara y Victoria serious wound, which was the direct and immediate cause of his death thereafter.

CONTRARY TO LAW.” (Ibid.)

When arraigned on September 5, 2007, accused-appellee entered a plea of NOT GUILTY to the crime charged against him. (Records, p. 26) Thereafter, trial on the merits ensued.

In the course of the trial, the prosecution presented five (5) witnesses, namely: (1) Romeo Galang; (2) Quirino Vergara, brother of the victim Apolonio Vergara; (3) PO3 Jay Santos, Investigator of the Manila Police District, Homicide Section; (4) Dr. Romeo T. Salen, a Medico-Legal Officer of the Manila Police District, Crime Laboratory; and (5) Leonor Vergara Reyes, sister of the victim Apolonio Vergara. Their testimonies are collectively summarized below.

Romeo Galang (hereinafter Galang) testified that on July 16, 2006 at about 4:30 in the afternoon, he was buying snacks from a store along Kagitingan Street, Tondo, Manila. While thereat, he saw Tony Boy Pineda and victim Apolonio Vergara (hereinafter Apolonio) arguing with each other. A little later, Quirino Vergara (hereinafter

Quirino), the victim's brother, arrived and tried to pacify his brother Apolonio. After Quirino had pacified his brother, accused-appellee arrived at the scene and punched the victim Apolonio from behind which made the latter fall on the ground and hit the pavement.

He further declared that Quirino immediately called for a sidecar (tricycle) and brought Apolonio to the nearest hospital, the Gat Andres Bonifacio Hospital. (TSN of Romeo Galang dated April 23, 2008, pp. 8 – 16)

Quirino corroborated Galang's declarations in open court. He also testified that accused-appellee suddenly arrived at the scene and punched his brother Apolonio on the right portion of his face which caused his brother to fall on the ground. He immediately rushed to the side of his brother Apolonio and helped him to get up. Further, he testified that while he was assisting his brother, accused-appellee was on his way back but the people around were able to prevent him. On board a tricycle, he then brought Apolonio to Gat Andres Bonifacio Hospital. Upon arrival, however, Apolonio was declared comatose. (TSN of Quirino Vergara dated June 11, 2008, pp. 8-9; TSN of Quirino Vergara dated July 30, 2008, pp. 4 – 7) Later that night, Apolonio was transferred to the Jose Reyes Memorial Hospital. Three days after the incident or on July 19, 2006 at about 5:00 in the morning, Apolonio died. (TSN of Quirino Vergara dated July 30, 2008, p. 11)

Later that day at around 2:00 in the afternoon, the Crime Laboratory of the Manila Police District received a request for the conduct of an autopsy on Apolonio's body. (TSN of Dr. Romeo T. Salen dated December 3, 2008, p. 12) Dr. Romeo T. Salen (hereinafter Dr. Salen) then proceeded to Lorenzo Memorial Homes and conducted the autopsy. In Medico-legal Report No. M-2006-336 dated July 23, 2006 (Records, p. 48), Dr. Salen reported the following findings:

“FINDINGS:

POSTMORTEM FINDINGS:

Fairly nourished, fairly developed, male cadaver in rigor mortis with postmortem lividity at the dependent portions of the body. Conjunctivae are pale. Lips and nailbeds are cyanotic.

HEAD:

Hematoma, occipital region, measuring 7 by 5 cm, along the posterior midline.

The occipital bone is fractured with massive subdural and subarachnoidal hemorrhages.

The rest of the visceral organs are markedly pale.

Stomach contains small amount of brownish sticky liquid.

xxx xxx xxx.

CONCLUSION:

Cause of death is Traumatic Injuries, Head.” (Ibid.)

On July 28, 2006 at around 9:00 in the morning, Quirino and his sister Leonor Vergara Reyes (hereinafter Leonor) went to the Homicide Section of the Manila Police District to report the death of their brother. (TSN of PO3 Jay Santos dated September 10, 2008, p. 8) PO3 Jay Santos (hereinafter PO3 Santos), the investigator on duty, received said report and learned that the assailant was a certain Hercules de Leon alias “Ondat”. Upon inquiry, he also learned from the informants that the victim died because of a bloat in the head which eventually caused his death on July 19, 2006. (TSN of PO3 Jay Santos dated September 10, 2008, pp. 8-11)

PO3 Santos testified that he conducted further investigation and went to the crime scene to look for other possible witnesses. Thereafter, he prepared a Crime Report dated August 1, 2006. (TSN of PO3 Jay Santos dated September 10, 2008, pp. 15-17)

Finally, on the civil aspect, Leonor testified that she incurred a total of P100,906.05 as hospital and funeral expenses. (TSN of Leonor Vergara Reyes dated February 9, 2009, pp. 8-17)

To counter the evidence of the prosecution, the defense presented the following as witnesses: (1) the accused-appellee himself; (2) Delia Ortega; and (3) Antonito "Tony Boy" S. Pineda.

Accused-appellee, a barangay tanod, testified that on July 16, 2006 at around 4:30 in the afternoon, he was washing clothes at his house in Matimtiman Street, Tondo, Manila when Rodel Pineda (hereinafter Rodel) came to ask for his help. He was informed that Tony Boy Pineda (hereinafter Tony Boy), Rodel's brother, was being chased by someone with a knife. Acting on such information, he and Rodel proceeded to Kagitingan Street, Tondo, Manila, about 2-3 meters away from Matimtiman Street. (TSN of Hercules de Leon dated April 1, 2009, pp. 10-12)

He further declared in open court that when he got to Kagitingan Street, he saw Apolonio running after Tony Boy. He tried to pacify Apolonio by embracing him and talking him out of it. Apolonio tried to escape from his arms to still pursue Tony Boy. Unfortunately, Apolonio lost balance, fell and hit the ground. Apolonio, whose head was then bleeding, was immediately helped by his brother Quirino and they walked home which was about 50 to 60 meters away. (TSN of Hercules de Leon dated April 1, 2009, pp. 14-17)

The next defense witness Delia Ortega, a hamburger vendor at Kagitingan Street corner Matimtiman Street, testified that she saw Tony Boy and Apolonio fighting. According to her, Apolonio was holding two (2) knives and he was giving one to Tony Boy who refused to accept. Rodel, Tony Boy's brother, was also there trying to stop the fight. Since his efforts were useless, Rodel left to call accused-appellee for help. (TSN of Delia Ortega dated June 17, 2009, pp. 15-22)

After fifteen (15) minutes or so, accused-appellee arrived with Rodel. Accused-appellee then tried to stop the fight by embracing Apolonio. Tony Boy ran away while Apolonio struggled to escape from accused-appellee's arms. Apolonio eventually escaped from accused-appellee's arms but he fell flat on the ground. Quirino helped his brother Apolonio get up and saw blood dripping from his head. The Vergara brothers then went home. (TSN of Delia Ortega dated June 17, 2009, pp. 25-28)

Antonito Pineda, the third and last witness for the defense, testified that at about 5:00 in the afternoon of July 16, 2006, he was outside Thinking Kid School, his place of work, located along Matiisin Street, Tondo, Manila. After cleaning the school premises, he decided to take a rest. Suddenly, Apolonio approached him and challenged him to a fight. He declined the challenge. Apolonio at that time was armed with two (2) bladed weapons.

Quirino arrived and pacified his brother Apolonio. He was also able to confiscate the bladed weapons from Apolonio. Quirino, however, suggested that he and Apolonio engage instead in a fist fight just to release the tension between them. At first, he did not take Quirino's suggestion positively but due to insistence, he eventually agreed to have a fist fight with Apolonio. He, however, opted to leave because Apolonio was too drunk. When he left, accused-appellee was pacifying Apolonio. He no longer saw the succeeding events that transpired after accused-appellee pacified Apolonio. (TSN of Antonito Pineda dated July 29, 2009, pp. 8-18)

After trial on the merits, the RTC rendered a decision (Rollo, pp. 19-31) finding accused-appellee guilty but only for reckless imprudence resulting in homicide. It ruled that the elements of the crime of murder are not attendant in the instant case. It explained that as a barangay tanod, accused-appellee merely responded to a report from one Rodel Pineda, of the incident between the victim Apolonio and Tony Boy. It noted that accused-appellee did not even arm himself with a baton or stick. Further, it also noted that accused-appellee did not seek the assistance of another barangay official or barangay tanod to act as his partner in resolving the incident. Hence, treachery and

evident premeditation cannot be imputed upon the accused-appellee. The dispositive portion of the challenged judgment was quoted in the prefatory paragraph of this decision.

Dissatisfied of the RTC decision, the prosecution filed a motion for reconsideration on January 31, 2011 (Records, pp. 199-209), to which the defense submitted its comment (Rollo, pp. 213-214) on February 7, 2011.

Pending resolution of the motion for reconsideration, the prosecution filed on February 8, 2011 a Very Urgent Ex-Parte Motion for the Issuance of Bench Warrant (Rollo, pp. 216-217). This motion was filed after it has received information that accused-appellee was released from the Manila City Jail as he has already served his sentence.

In an Order (Records, pp. 220-221) dated February 9, 2011, the RTC denied the prosecution's motion for reconsideration for absence of compelling reason to justify the reversal of the January 19, 2011 decision. It, however, granted the motion for issuance of bench warrant explaining that the January 19, 2011 decision has not yet attained its finality on account of the motion for reconsideration filed by the prosecution. Accordingly, it ordered the issuance of a bench warrant against accused-appellee.

On February 11, 2011, the prosecution filed a Notice of Appeal (Records, p. 224) which the RTC gave due course in its Order (Rollo, p. 226) dated February 15, 2011.

On March 10, 2011, accused-appellee filed before this Court an Ex-Parte Motion to Lift Bench Warrant (Rollo, pp. 34-36). Accused-appellee reiterated his plea for the lifting of the bench warrant on April 5, 2011 via a Second Very Urgent Ex-Parte Motion to Lift Bench Warrant (Rollo, pp. 44-46).

On May 9, 2011, accused-appellee filed a Motion for Early Reraffle and Resolution of the Second Very Urgent Ex-Parte Motion to Lift Bench Warrant (Rollo, pp. 47-48).

On August 5, 2011, this Court's then Sixteenth Division, issued an Order (Rollo, pp. 50-52) directing the prosecution and the Office of the Solicitor General (OSG) to file their comment on accused-appellee's Ex-Parte Motion to Lift Bench Warrant, within ten (10) days from notice.

The prosecution through the trial prosecutor complied with the directive on September 2, 2011 (Rollo, pp. 64-68). The OSG also complied with the August 5, 2011 Order on September 19, 2011 (Rollo, pp. 106-114).

On November 16, 2011, the prosecution submitted an Urgent Ex-Parte Manifestation (Rollo, pp. 125-126) informing this Court that it gathered an information from the victim's sister that accused-appellee was arrested by the operatives of the Manila Police District Command for violation of Revised Ordinance 5555. Attached as annexes thereto are the Police Superintendent's Referral to the City Prosecutor of Manila, Joint Affidavit of Apprehension and Booking Sheet and Arrest Report . (Rollo, pp. 127-130)

On December 21, 2011, the then Thirteenth Division issued a Resolution (Rollo, pp. 118-124) denying accused-appellee's motions to lift bench warrant for lack of merit. It ratiocinated that since the judgment of conviction has not yet attained finality in view of the notice of appeal filed by the prosecution, accused-appellee should not have been released from custody especially so that there was no order of release issued by the RTC. Hence, the period of detention served by accused-appellee cannot as yet be credited to the full length of sentence due on him.

Subsequently, the Clerk of Court received two (2) typewritten letters on January 9, 2012 and January 26, 2012, respectively, purportedly signed by the accused-appellee. In said letters, accused-appellee denied having signed the Ex-Parte Motion to Lift Bench Warrant dated March 9, 2011 as well as the Second Very Urgent Ex-Parte Motion to Lift Bench Warrant dated April 5, 2011 which became the subject of the Resolution dated December

21, 2011.

On May 4, 2012, the then Twelfth Division issued a Resolution (Rollo, pp. 224-227) noting the aforementioned letters. It also directed the plaintiff-appellant to file its appellant's brief within thirty (30) days from notice, to which accused-appellee shall file his appellee's brief within thirty (30) days from receipt of the appellant's brief. Further, the Court required the Public Attorney's Office and/or Atty. Rizalino A. Floresca to render an explanation/comment on accused-appellee's letters disowning his signatures on the ex-parte motions to lift bench warrant, within ten (10) days from notice.

Meanwhile, on April 26, 2012, accused-appellee filed a Motion to Dismiss Appeal (Rollo, pp. 228-237), arguing that the instant appeal is dismissible under Section 1(i), Rule 50 of the 1997 Rules of Civil Procedure in relation to Section 18, Rule 124 of the Revised Rules of Criminal Procedure.

On June 28, 2012, this Court's then Twelfth Division issued a Resolution (Rollo, pp. 277-281) pertaining to the letters of the accused-appellee wherein he denied having signed the ex-parte motions to lift bench warrant. The letters also had accused-appellee emphatically stating that he did not interpose any appeal of the RTC decision.

In the said Resolution, it was confirmed that indeed there was no appeal filed by accused-appellee. It also expressed disgust over the fact that mysterious pleadings managed to find their way into the records of this case. It, however, asserted that it has no intention of finding out whoever was responsible for the filing of the ex-parte motions to lift bench warrant. But, it ventured to say that whoever filed said motions must be one who is sympathetic to accused-appellee's plight or one who has an interest in his defense. Thus, the Court's warning that accused-appellee and his defense lawyers must communicate and coordinate with each other in the preparation and filing of their pleadings so as not to detract from an orderly administration of justice. (Rollo, pp. 280-281)

Further, in the same Resolution, the Court granted the OSG's prayer for an extension of ninety (90) days or until September 12, 2012 within which to file the Brief. Within the same period, the OSG was directed to file comment on accused-appellee's motion to dismiss. (Rollo, p. 281)

In a Minute Resolution dated September 26, 2012, the OSG was granted another extension of twenty-five (25) days from September 10, 2012 or until October 5, 2012, within which to file its brief and comment on the motion to dismiss. (Rollo, p. 305)

On October 1, 2012, the OSG finally filed its Appellant's Brief (with Comment to the Motion to Dismiss) (Rollo, pp. 306-323), to which accused-appellee filed his brief (Rollo, pp. 338-350) on February 11, 2013.

The OSG anchors its brief on the following arguments-

"I.

THE APPEAL IS NOT DISMISSIBLE; [AND]

II.

NO DOUBLE JEOPARDY SINCE THE RTC DECISION IS ASSAILED AS VOID, BEING TAINTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION."
(Rollo, p. 312)

The OSG argues that its appeal is not dismissible. It asserts that since it was the public prosecutor who filed a motion for reconsideration of the RTC judgment and thereafter a notice of appeal, the applicable rule is Rule 122 of the Revised Rules of Criminal Procedure. It further asserts that the general provisions in Section 1(i), Rule 50

of the 1997 Rules of Civil Procedure cannot prevail over Section 8, Rule 124 of the Revised Rules of Criminal Procedure which especially governs the dismissal of an appeal for only two grounds: (a) abandonment of appeal; and (b) failure to prosecute.

As regards the issue on double jeopardy, the OSG explains that double jeopardy will not attach when a trial court acted with grave abuse of discretion. It points out that it has established that the killing was attended by treachery as accused-appellee positioned himself at the back of the victim in order to avoid detection from the latter so as to deprive any opportunity to defend himself and retaliate.

On the other hand, accused-appellee maintains that the instant appeal is dismissible. He points out that under Section 7, Rule 120 of the Revised Rules on Criminal Procedure, a judgment of conviction may be modified or set aside only upon motion of the accused. Moreover, accused-appellee claims that pursuant to the same provision, the judgment of conviction against him has attained finality as he had served the full sentence meted upon him. He further claims that the filing of the instant appeal is a defiance of the rule on double jeopardy.

The Court finds no merit in the instant appeal.

Under Section 1, Rule 122 of the Revised Rules of Criminal Procedure, any party may appeal from a judgment or final order, unless the accused will be placed in double jeopardy. Such party includes the People of the Philippines which is represented by the OSG, as in the instant appeal.

The question now is whether the prosecution's appeal will violate the right of the accused-appellee against double jeopardy.

The rule on double jeopardy is one of the pillars of our criminal justice system. It dictates that when a person is charged with an offense, and the case is terminated — either by acquittal or conviction or in any other manner without the consent of the accused — the accused cannot again be charged with the same or an identical offense. (*Villareal vs. People*, 664 SCRA 519, 548 [2012]) This finds expression in our Constitution as one of the fundamental rights of the citizen, viz.:

“Article III — Bill of Rights

Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.”

Section 7, Rule 117 of the Revised Rules of Criminal Procedure, which implements this particular constitutional right, provides as follows:

“SEC. 7. Former conviction or acquittal; double jeopardy. — When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

xxx xxx xxx.”

For double jeopardy to apply, the following requisites must be present:

(a)

the complaint or information or other formal charge was sufficient in form and substance to sustain a conviction;

(b)

the court had jurisdiction;

(c)

the accused had been arraigned and had pleaded; and

(d)

the accused was convicted or acquitted, or the case was dismissed without his express consent. (People vs. Atienza, 673 SCRA 470, 483 [2012])

The above requisites have been established in this case. Records show that accused-appellee was charged with murder in Criminal Case No. 07254690 under a valid Information before the trial court which has jurisdiction over it. He was arraigned and pleaded not guilty to the offense charged. After trial on the merits, he was convicted albeit for a lesser offense, Reckless Imprudence Resulting in Homicide under Article 365 of the Revised Penal Code. Clearly, double jeopardy has set in.

Let Us examine, however, whether the instant case falls under any of the exceptions to the rule on jeopardy which prohibits the state from appealing the judgment in order to reverse the acquittal or to increase the penalty imposed, viz: (1) where the prosecution is deprived of a fair opportunity to prosecute its case, tantamount to a deprivation of due process (Villareal vs. People, supra, p. 550); (2) where there is a finding of mistrial (People vs. Court of Appeals and Galicia, 516 SCRA 383, 397 [2007]); and (3) where there has been a grave abuse of discretion (Ibid).

Indubitably, the first and second exceptions do not obtain in this case. Records show that the prosecution was never denied due process as it was able to present its evidence. More importantly, the judgment conviction was arrived at only after all the evidence was considered, weighed and passed upon. Thus, the only exception that needs to be considered is whether the RTC committed grave abuse of discretion in convicting accused-appellee of only Reckless Imprudence Resulting in Homicide under Article 365 of the Revised Penal Code, instead of Murder, the offense charged. Notably, the prosecution's instant appeal is anchored on this exception. (Rollo, p. 316)

The prosecution's allegation, however, of grave abuse of discretion is utterly misplaced. This is an issue appropriate for a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure as grave abuse of discretion or errors of jurisdiction may be corrected only by the special civil action of certiorari. (Prudential Guarantee and Assurance Employee Labor Union vs. National Labor Relations Commission, 672 SCRA 375, 384 [2012])

Even assuming arguendo that the RTC may have improperly assessed the evidence on hand, this Court is certain that the judgment of conviction for the lesser offense of reckless imprudence resulting in homicide was arrived at after evaluating and passing upon the evidence of both parties. In such a case, any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by certiorari. (First Corporation vs.

Former Sixth Division of the Court of Appeals, 526 SCRA 564, 578 [2007]) An error of judgment is one which the court may commit in the exercise of its jurisdiction. (Lim vs. Vianzon, 497 SCRA 482, 494 [2006])

WHEREFORE, premises considered, instant appeal is DENIED. The appealed Decision dated January 19, 2011 of the Regional Trial Court (RTC), Branch 8 of Manila, convicting accused- appellee Hercules de Leon @ “Ondat” of Reckless Imprudence Resulting in Homicide, is AFFIRMED.

SO ORDERED.

Lopez and Inting, JJ., concur.

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