

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMON NAVARRA AND VIRGILIO CRUZ, DEFENDANTS-APPELLANTS.*G.R. No. L-25607. October 14, 1968*

Ponente: SANCHEZ, J.

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The charge is murder.[1] The entire evidence was presented before Judge Demetrio Vinson who passed away before judgment could be reached. Judge Jose F. Fernandez penned the decision below. The judgment declared the two defendants, Ramon Navarra and Virgilio Cruz, guilty thereof. They were each sentenced by the Court of First Instance of Negros Occidental to reclusion perpetua, to indemnify jointly and severally the heirs of the deceased Tomas Martir in the sum of P6,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs. The present is an appeal from that judgment.

At about 11:00 p.m. on December 11, 1961 in Bacolod City, Ramon Masa, a merchant, was on his way home from Max Restaurant where he bought food, pancit and siopao. He met Tomas Martir alias Masing at the corner of Washington-Luzurriaga Streets. Martir was known to be a violent person, a police character, and one not averse to liquor. Martir called Masa. The latter replied that he was in a hurry as it was already late. Martir retorted: "You are a fool. Now, I am going to stab you". Without much ado, Martir delivered a fist blow on the belly of Masa who dropped to the ground. Martir entered the Caviteña Bar. Masa picked up his things and started to go home.

Meanwhile, a police patrol jeep occupied by Patrolmen Rodolfo Pico and Felipe Aplasca passed by and saw Martir going back and forth in front of the Caviteña Bar. They stopped, heard Martir murmur that he would kill somebody that evening. Patrolman Pico observed that Martir smelled of alcohol. The two police officers were able to persuade Martir to go home. They conducted him to the front of his house at Smith Street. Instead of going up, Martir joined the conversation of some people in the street.

It was about this time that defendants Ramon Navarra and Virgilio Cruz, also of the Bacolod City police force assigned with the Mayor's special squad, were on patrol in another jeep. They saw Ramon Masa standing at the corner of Washington and Gonzaga Streets signalling the patrol to stop. Getting off the jeep, Navarra inquired from Masa what it was all about. Masa reported his incident, shortly before, with Tomas Martir. Navarra and Cruz invited Masa to report the matter to the police station. The latter suggested instead that he would follow after taking home the food that he bought, which might get cold. When Masa's wife learned of the incident with Martir, she prevailed upon Masa to stay home.

The two defendants proceeded to the capitol shopping center, to the place where Masa informed them that he was manhandled by Martir. The two came upon Sgt. David Sevilleo likewise of the Bacolod City police at the corner of Lacson and Burgos Streets. Sevilleo was on his way to report for duty and got a ride from the two defendants.

Near the bridge of Smith Street, the three came upon a group of six persons. Navarra and Cruz alighted, inquired if those people had any weapons, searched them, found none. The two defendants advised the group to break up. In that group was Tomas Martir. Navarra approached Martir and told him that there was a complaint against him.

Martir denied the charge. The two defendant-policemen sought the advice of Sgt. Seville as to what to do with Martir with respect to Masa's complaint. Sgt. Seville answered that it would be best to take Martir along to headquarters for investigation and record purposes.

The three police officers took Martir along. At police head-quarters on Smith Street, Sgt. Seville alighted, proceeded to his post. Defendant police officers were then informed that there was no complaint recorded against Martir. So they proceeded with Tomas Martir to the former's headquarters [of the Mayor's special squad] at City Hall on Araneta Street. Here, they also found from their own blotter that Ramon Masa had not yet reported the incident. As Martir denied the charge against him, the two defendants decided to take him home. Upon nearing Florida Hotel in San Juan Street, they stopped and Navarra entered the hotel.

From here on, there is a sharp divergence of evidence between the prosecution and the defense. The People's version which gained the nod of the court below is this: Upon reaching the gate of the Florida Nightclub, which was on the ground floor of Florida Hotel, accused Ramon Navarra alighted and approached the watchman, Antonio Santiago, and inquired about his brother Jesus Navarra who was living inside the compound of the nightclub. Upon being informed that Jesus was inside, Ramon Navarra entered the gate and called out to his brother. While Ramon Navarra was inside the nightclub compound, Tomas Martir inquired from the accused Virgilio Cruz why they stopped at the nightclub where his enemy, Jesus Navarra, was. Forthwith, Martir jumped from the jeep, started to run away. Accused Virgilio Cruz then went running to his co-accused Ramon Navarra shouting "Pare Ramon, he has gone, he left away". Ramon Navarra rushed to the watchman Antonio Santiago who was at the gate and directed him to run after Tomas Martir. Santiago demurred, as he was watching the nightclub. Navarra angrily threatened to shoot Santiago if the latter disobeyed him. Whereupon, Santiago ran after the fleeing man, collared him in front of the Sea Breeze Hotel. Ramon Navarra who had followed them shouted to Antonio Santiago to keep distance. Santiago pushed Tomas Martir dashing him against the wall. Almost simultaneously, Ramon Navarra, with his service revolver, shot Tomas Martir twice. The latter staggered towards the direction of the nearby Wonder Inn. But then, the accused Virgilio Cruz, also with his service revolver, shot Tomas Martir once. This was followed by Ramon Navarra with two shots. Tomas Martir fell, sprawled face downward to the ground alongside Sea Breeze Hotel in San Juan Street. As Ramon Navarra reached the dead man, he directed Antonio Santiago to drop a knife which was handed to the latter by Segundo Masa (brother of Ramon Masa) near the prostrate body of Tomas Martir. Santiago did so. Sgt. Porfirio Arcobillas shoved the knife nearer to the body of the deceased Tomas Martir, because Antonio Santiago did not drop it close enough.

The medico-legal necropsy report filed by Dr. Alfredo Lamayo of the Negros Provincial Hospital showed that five bullets found their mark on the body of Tomas Martir. Of these, the wound which entered the parasternal border was pronounced fatal since it hit the lungs, the pericardium, the diaphragm, the stomach, and the left border of the liver. Dr. Lamayo also found that the deceased smelled of intoxicating drink which could either be whiskey or beer.

1. Defendants' brief pleaded self-defense in exculpation.

Defendants' version of the incident follows: On the way to conduct Tomas Martir home, they passed by Florida Nightclub where Segundo Masa, a brother of Ramon Masa, had his job. Defendant Navarra asked defendant Cruz who was at the wheel to stop the jeep as he would inquire from Segundo Masa of the whereabouts of Ramon Masa. Navarra went inside the Florida Nightclub compound. Defendant Cruz was left with Martir in the jeep. Cruz passed water in front of the jeep. Martir suddenly and unexpectedly grabbed from behind Cruz' service revolver which was tucked in his waist. The two grappled for the possession of the gun. Meanwhile, Cruz called Navarra for help: "Pare Ramon, Pare Ramon, help me". During the struggle, the gun went off. It hit Martir. But Martir held to the gun, succeeded in wresting possession thereof. It was then that Navarra arrived and shouted to

Tomas Martir: "Masing, Masing, drop it". Martir did not heed the warning, instead faced Navarra, pointed the gun at him, and said: "You also". Defendant Navarra sidestepped to his left and fired four successive shots. Martir dropped the gun, dizzily walked away about five arm stretches and fell face down.

Since *People vs. Ansoyon*, 75 Phil. 772, 777, courts of justice have clung to the rule that for the plea of self-defense to prosper, a defendant must rely on the strength of his own evidence, not on the weakness of that for the prosecution. Reason for this is that even if the People's evidence were weak it would not be dis-believed after the defendants themselves have admitted the killing. We do not propose to stray away from this salutary rule.

With the standard forged in *Ansoyon*, we now analyze the evidence. First and foremost is the ballistic finding that four of the bullet wounds were from the service revolver of Navarra and one from the service revolver of Cruz. It cannot be true therefore that Cruz did not fire a shot as he, thru his testimony, would want the court to believe. Secondly, it does not jibe with normal course of events that if really the deceased Tomas Martir was able to wrest Cruz' revolver, Martir did not fire a shot. The natural impulse would have been for Martir to do so. What did he grab the revolver for? Thirdly, it would not seem credible, as the court below observed, that Tomas Martir could have handled the gun so ably and aimed it at Ramon Navarra. Fourthly, the balance of probabilities is that, again as the lower court pointed out, if Tomas Martir had the upperhand and was able to wrest the gun in the process, that gun could not have misfired to hit Martir himself. Lastly, it is improbable anyway that Martir could have presented such a spirited struggle. For, at that time, he was drunk.

We find that self-defense has not been proven.

2. Judge Jose F. Fernandez declared the crime to be that of murder upon the finding that defendants took advantage of superior strength within the meaning of paragraph 15, Article 14 of the Revised Penal Code.

The judge is correct. The deceased Tomas Martir was unarmed, under the influence of liquor. He was much smaller than Navarra. Navarra's attack came after he (Martir) was pushed to the wall by Antonio Santiago. Not content with this and after Martir tried to escape, Virgilio Cruz fired at him. Not only that. This was followed by two other shots from Navarra. Since the attack was unexpected, the aggressors were police officers fully armed, and the deceased was defenseless and under the influence of liquor, a clear case of abuse of superiority is present. The two took advantage of these circumstances to consummate the offense.[2]

3. The performance of our police officers since the not-too--remote past leaves much to be desired. The catalogue of crimes into which our policemen have fallen has galvanized the minds of our government leaders and civic spirited citizens into the formula-tion of steps to decrease - not to say to eliminate - the number of our policemen who debase their position, give dishonor to their uniform, and who have become menaces to, rather than protectors of, the community.

A little more than two years ago, Congress enacted the Police Act of 1966[3] with the end in view of upgrading the quality of our police officers. The explanatory note to the bill that became law as well as the law itself reflect a grave concern over the substandard local police service in this country vis-a-vis the upsurge in crime. Contemporary history notes the fact that police officers have not been insulated from criminal acts.

Our concept of policemen is that they are peace officers. The term "peace officers" suggests their primary role in our society. They are to uphold the law, not to break it; to protect citizens from crimes, not to commit them; to induce respect from the citizenry, not their distrust; to perform their duty to keep peace in the community, not to turn their backs on crime and violence; to defend the people from murderers, not to murder them. The policemen then should be made to understand that when they are found guilty of crimes which they themselves are oath-bound to prevent, they shall receive the full measure of the law. The present case before us is illustrative

indeed of how a law upholder has become a lawbreaker. Defendants here were appropriately meted the penalty imposed upon them by the lower court.

For the reasons given, the judgment under review is hereby affirmed.

Costs against defendants-appellants.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Castro, Angeles, Fernando, and Capistrano, JJ., concur.

Reyes, J.B.L., J., concurs in the result.

Zaldivar, J., on leave.

[1] Criminal Case 7695, Court of First Instance of Negros Occidental, entitled "People of the Philippines, Complainant, versus Ramon Navarra, et al., Accused".

[2] See: U.S. vs. Consuelo, 13 Phil. 612, 614; People vs. Quesada, 62 Phil. 446, 450; People vs. Antonio, 73 Phil. 421, 424; People vs. Mendoza, 91 Phil. 58, 64; People vs. Develos, L-18866, January 31, 1966; People vs. Reyes, L-21445, May 30, 1967; People vs. Verzo, L-22517, December 26, 1967.

[3] Republic Act 4864, effective September 8, 1966.

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