

ANICETO IBABAO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-36957. September 28, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A Petition for Review on Certiorari of the Decision of the then Court of Appeals, in CA-G.R. No. 12784-CR, increasing the penalty imposed on petitioner in *People of the Philippines vs. Aniceto Ibabao*, for Homicide thru Reckless Imprudence, for his failure to lend aid to the victim.

Before the City Court of Davao, in Criminal Case No. 3091-C, petitioner was charged with Homicide thru Reckless Imprudence. The Information did not allege that the accused had failed to lend on the spot to the injured person such help as was in his hands to give.

Among the witnesses presented by the prosecution was Jose Patalinghog, Jr., a bystander, who testified that on April 30, 1967, at about 11:00 p.m., while he was at Bankerohan terminal, he clearly saw an owner-type jeep bump a person; that the said jeep did not stop; that upon request of a security guard, he gave chase, wrote down the plate No. 57675, overtook it, and recognized the driver as the petitioner, and thereafter reported the incident to the Matina Police Sub-Station.

For his part, petitioner presented two witnesses in support of his defense of alibi.

After trial, the City Court rendered a verdict of conviction thus:

"In the case at bar, there appears no cogent or sufficient reason for the accused not to lend aid on the spot to the fatally injured victim of the accident. As such, applying the foregoing provisions the next penalty next higher in degree is prision correccional in its medium and maximum period shall be followed. Furthermore, the heirs of the deceased are lawfully entitled to indemnity and moral damages.

"IN VIEW WHEREOF, the herein accused is hereby pronounced guilty beyond rational doubt of the offense charged. And applying the Indeterminate Sentence Law, said accused is hereby sentenced to undergo a prison term of from one year eight months and twenty days of prision correccional, as minimum to four years, two months and one day of prision correccional as maximum, and to pay the costs, with accessories prescribed by law.

"Said accused is further sentenced to indemnify the heirs of the deceased in the sum of Six Thousand Pesos (P6,000.00), plus moral damages in the sum of Two Thousand Pesos (P2,000.00), with subsidiary imprisonment in case of insolvency in accordance with Article 39 of the Revised Penal Code.[1]

Upon appeal, the then Court of Appeals modified the aforecited Decision by increasing the penalty as follows:

"However, we notice that the decision a quo only awards the amount of P6,000.00 as indemnity. Following the doctrine laid down in the cases of *People vs. Pantoja*, L-19793, October 11, 1968 and *People vs. Ompad, et al.* L-23513, January 31, 1969, the same should be increased to P12,000.00.

"The imposable penalty is prision correccional in its medium and maximum periods (Article 365, Revised Penal Code). Considering that appellant failed to stop and give aid to the victim, the penalty should be one degree higher which is prision mayor in its minimum and medium periods (R.A. 1790). Applying the Indeterminate Sentence Law, the penalty should be from three (3) years, six (6) months and twenty one (21) days of prision correccional as minimum, to seven (7) years, four (4) months and one (1) day of prision mayor. The P2,000.00 moral damages is hereby eliminated considering that the same is already included in the P12,000.00 indemnity. No subsidiary imprisonment in case of insolvency. (Republic Act No. 5465).

"WHEREFORE, modified as indicated above, the appealed decision is hereby affirmed at appellant's costs.[2]

Before us now, petitioner has interposed this appeal by certiorari praying for the modification of the penalty. Subsequently, he filed a Motion for New Trial based on alleged newly discovered evidence, particularly, the recantation by prosecution eyewitness Jose Patalinghog.

The legal issues raised are: 1) whether or not the failure of petitioner to lend aid to his victim justifies the imposition of the penalty next higher in degree to that provided for in paragraph 2 of Article 365, as amended, of the Revised Penal Code even though such circumstance was not alleged in the Information; and 2) whether or not Patalinghog's affidavit of recantation is "newly discovered evidence" warranting new trial.

The pertinent provision of Article 365 of the Revised Penal Code, as amended, reads:

"Art. 365. Imprudence and negligence. - Any person who, by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony, shall suffer the penalty of arresto mayor in its maximum period to prision correccional in its medium period; if it would have constituted a less grave felony, the penalty of arresto mayor in its minimum and medium periods shall be imposed; if it would have constituted a light felony, the penalty of arresto menor in its maximum period shall be imposed.

"Any person who, by simple imprudence or negligence, shall commit an act which would otherwise constitute a grave felony, shall suffer the penalty of arresto mayor in its medium and maximum periods; if it would have constituted a less serious felony, the penalty of arresto mayor in its minimum period shall be imposed.

xxxx xxxx xxxx

"In the imposition of these penalties, the courts shall exercise their sound discretion, without regard to the rules prescribed in article sixty-four.

"The provisions contained in this article shall not be applicable:

"1. When the penalty provided for the offense is equal to or lower than those provided in the first two paragraphs of this article, in which case the courts shall impose the penalty next lower in degree than that which should be imposed, in the period which they may deem proper to apply.

"2. When, by imprudence or negligence and with violation of the Automobile Law, the death of a person shall be caused, in which case the defendant shall be punished by prision correccional in its medium and maximum periods.

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The penalty next higher in degree to those provided for in this article shall be imposed upon the offender who fails to lend on the spot to the injured parties such help as may be in his hands to give. (As amended by Rep. Act No. 1790).

Petitioner submits that the last paragraph of the aforequoted Article 365 is not applicable to offenses under paragraph "2" of the same Article because of the opening statement that "the provisions contained in this article

shall not be applicable", implying that paragraph "2" is in a class by itself and is not affected by the rest of the provisions of the same Article.

The argument is flawed. The proviso that "the provisions contained in this article shall not be applicable" clearly refers to the preceeding paragraphs. Paragraphs "1" and "2" are exceptions to the application of the said preceeding paragraphs under the circumstances mentioned. The last paragraph on failure to lend aid on the spot necessarily applies to all situations envisioned in the said Article whenever there is an injured party.

We find merit in petitioner's contention, however, that the increased penalty is inapplicable to him because the failure to give aid to the injured on the spot has not been alleged in the Information. So far as we have been able to ascertain, this question has not been definitely passed upon by this Court. But, we agree with the then Court of Appeals when it ruled in *People vs. Beduya*[3] that "the failure to render assistance, constitutes a qualifying circumstances because the presence thereof raises the penalty by one degree (like treachery which qualifies homicide to murder). The same must be alleged in the information to apprise the defendant of this charge unlike an ordinary aggravating circumstance which even if not alleged in the information, can be taken into account if proved at the trial without objection."

We are neither inclined to consider such failure to lend assistance as a generic aggravating circumstance that would justify the imposition of the penalty in its maximum period, since it is not an aggravating circumstance listed in Article 14 of the Revised Penal Code.

Coming now to the Affidavit of recantation of Jose Patalinghog, Jr., suffice it to state that, at this stage of the proceeding, the same cannot be considered as newly discovered evidence to warrant new trial. In the first place, the Affidavit was thought of only after this petition was initially denied for lack of merit. Secondly, as has been the consistent ruling of this Court - recantations should be taken with great caution. The reason is that if new trial should be granted at such instance where an interested party succeeds in inducing some of the witnesses to vary their testimony outside of court after trial, there would be no end to every litigation.[4] As held in *People vs. Saliling, et al.*[5]

"Affidavits of retraction executed by witnesses who had previously testified in court will not be countenanced for the purpose of securing a new trial. - It would be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on change their mind for one reason or another, for such a rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous witnesses. Affidavits of retraction can be easily secured from poor and ignorant witnesses usually for a monetary consideration. Recanted testimony is exceedingly unreliable. There is always the probability that it may later be repudiated. So courts are wary or reluctant to allow a new trial based on retracted testimony."

WHEREFORE, the penalty imposed by respondent Appellate Court is hereby modified and petitioner-accused is hereby sentenced, without regard to the rules prescribed in Article 64 of the Revised Penal Code as mandated by Article 365 of the same Code, to suffer an indeterminate sentence of two (2) years and four (4) months of prision correccional, as minimum, to four (4) years, two (2) months and one (1) day, also of prision correccional, as maximum; to indemnify the offended party in the sum of P30,000.00, and to pay the costs.

SO ORDERED.

Teehankee (Chairman), Plana, Relova, Gutierrez, Jr., and De La Fuente, JJ., concur.

[1] Original Record, pp. 146-147.

[2] Rollo, pp. 28-29.

[3] 4 C.A. Rep. 145; 60 O.G. 2668-2669.

[4] People vs. Delasa, 115 SCRA 74 (1982) citing Reyes vs. People, 71 Phil. 598 (1941).

[5] 69 SCRA 427 (1976).

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