

JORGE C. PACIFICAR, PETITIONER, VS. HONORABLE COURT OF APPEALS, COURT OF FIRST INSTANCE OF ILOILO AND THE PROVINCIAL SHERIFF OF ILOILO, RESPONDENTS.*G.R. No. L-33277. November 25, 1983*

Ponente: FERNANDO, C.J.

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In this certiorari proceeding, an error jurisdictional in character, namely the denial of procedural due process, is imputed to respondent Court of Appeals.[1] The antecedents, as set forth in a pleading of petitioner, disclose that a judgment of respondent Court, promulgated on June 30, 1970, affirmed his conviction for the crime of homicide, the sentence being imprisonment of not less than six years and one day of prison mayor as minimum to not more than fourteen years of reclusion temporal as maximum; it was thereafter sent to his attorney of record, Benjamin Defensor, on July 20, 1970, with such judgment having become final on August 5, 1970, resulting in the final entry made on November 4, 1970.[2] It turned out that his counsel, as far back as June 7, 1969, was nominated Provincial Fiscal of Iloilo, his confirmation coming on June 11.[3] It was not until October 5, 1970, almost one year and four months after such appointment, that he notified respondent Court.[4] His present counsel, Attorney Wenceslao G. Laureta, entered his appearance on November 11, 1970, and on December 7, 1970, filed a motion to cancel the entry of judgment.[5] The denial of such motion on January 5, 1971, with a motion for reconsideration likewise meeting the same fate in a resolution dated January 18, 1971, led to this certiorari proceeding.[6]

The affirmance of petitioner's conviction for the crime of homicide by respondent Court was based on the facts as found by respondent Court and set forth in its decision of June 30, 1970. Thus: "The evidence for the prosecution tends to show that on January 28, 1965, in the afternoon, the cargo truck of defendant Jorge Pacificar was leaving the town of Janiway, Iloilo, on the occasion of its town fiesta, for the nearby town of Badiagan. About 50 passengers were on board said cargo truck, some of whom were standing while the others were sitting. The defendant owner of the truck was standing, together with other passengers, on the floor of the truck. The main body of the truck had no roof except the one above the driver's seat. The deceased Melecio Abiado was seated atop the roof above the driver's seat together with another passenger. A certain Raymundo Pacificar, a relative of the wife of Melecio Abiado, also wanted to ride in the truck but Jorge refused him for he (Raymundo) appeared to be drunk. On the insistence of Melecio, over the refusal of Jorge, Raymundo finally was allowed to ride in the cargo truck. By the way, although incidentally Raymundo and Jorge carry the same surname, 'Pacificar', it is to the wife of Melecio that Raymundo is closely related. On reaching a certain barrio, the defendant ordered the driver to stop the truck because a passenger was to go down. Suspecting that Jorge would ask Raymundo to go down, Melecio asked Jorge, 'So you will drop Monding (referring to Raymundo) here. Darn you, will you force Monding to go down from the truck. Ah, Linti, I am not afraid of anybody. Linti, before reaching Linaywan, there will be fighting among us.' Resenting perhaps the remark, defendant in turn asked Melecio, 'To whom is that statement referred, Meling (Melecio)?' 'To you,' answered Melecio. Immediately thereafter, Jorge fired his

revolver three times at the deceased, Melecio, while the latter was on the roof above the driver's seat. Hit, Melecio dropped to the ground. He sustained the following injuries, to wit: '1. A penetrating gun shot wound of the 8th to 9th interspace, right chest, which penetrated the right pleural cavity; the right diaphragm and the right lobes of the liver. '2. A penetrating gun shot wound of the right flank with penetration into the right hepatic flexure, the mid-ileum and further penetration of the retro-parineal space with injury to the soft tissue structures and vascular elements. There was massive spillage of the focal material and small intestinal contents plus massive hempperitoneum and retroperitoneal hemorrhage. '3. A wound "Gun Shot" of the right femural area with fracture of the distal fetur.' A few days thereafter, Melecio died as a consequence of these gunshot wounds." [7] The next four pages of the opinion of respondent Court duly noted petitioner's claim that he acted in self-defense, and subjected to rigorous analysis of testimony on that point coming from both prosecution and defense witnesses. [8]

It was then made clear why according to law, self-defense cannot be invoked. "Real aggression presupposes an act positively strong as to show the wrongful intent of the aggressor, not merely a threatening or intimidating attitude. There must be a material attack in order that the right to defend must exist. (U.S. vs. Banzuela, 31 Phil. 565; U.S. vs. Santos, 17 Phil. 87). The acts of the deceased, if true as presented by the defense, constituted merely a threatening or intimidating attitude. They fall short of the legal concept of unlawful aggression. There is even doubt as to whether or not the deceased was in the act of sliding down the roof at the time he was shot in the face of the testimonies to the contrary of the witnesses for the prosecution. And we agree with the trial court where it gave the opinion that if it were true that the deceased was in the act of sliding down the roof, he could have fallen on the floor (inside) of the truck, not on the ground as what happened in this case. The fact that the deceased was hit on the right side of his body would show that he was not facing appellant. There were three shots fired at the deceased, according to the defense, and six shots, according to the prosecution. Whether there were three or six shots, we believe that either number of shots would militate against the claim of the defendant that he acted in self-defense. Firing three or more shots would enhance the belief that the defendant was bent on killing the deceased and not merely to disable him and/or repel his attack if at all there was any. (People vs. Sanchez, CA-G.R. No. 02162-CR, March 24, 1964). The rule is settled that one who claims self-defense must establish by means of clear and convincing evidence the excul-patory acts. (People vs. Coronel, 30 Phil. 112; People vs. Baguio, 43 Phil. 683; People vs. Gutierrez, 53 Phil. 609). And where the evidence of self-defense is of doubtful veracity, the defense must necessarily fall. In the instant case, the defendant failed to prove his plea of self-defense." [9]

From the foregoing, the lack of merit of this petition appears to be undeniable. It cannot prosper.

1. It would be to disregard what has long been the settled law as to when there is depri-vation of procedural due process if petitioner were to be indulged in his plea that such a right was denied him. As early as 1908, in U.S. v. Ling Su Fan, [10] this Court, citing Webster's famous definition of procedural due process, identified it with "a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial." [11] Such a succinct summary of what procedural due process signifies was reiterated in 1924 in Lopez v. Director of Lands. [12] More specifically, as applied in criminal cases, this Court, in People v. Castillo, [13] held "that if an accused has been heard in a court of competent jurisdiction, and proceeded against under the orderly processes of law, and only punished after inquiry and investigation, upon notice to him, with an oppor-tunity to be heard, and a judgment awarded within the authority of a constitutional law, then he has had due process of law." [14] The authority relied upon is a case of Philippine origin, Ong Chang Wing v. United States, [15] decided by the United States Supreme Court in 1910. It is quite manifest then that the claim of a denial of procedural due process lacks foundation.

2. New counsel for petitioner would, however, try to lend a semblance of plausibility to the allegation that there

was a denial of procedural due process by contending that service of the decision to the attorney of record cannot be considered valid as on the date thereof, he had previously been appointed Provincial Fiscal of Iloilo and presumably discharging its duties. Respondent Court, however, was not informed of such a fact. To argue thus is to ignore again the settled law on the subject. On February 23 of this year, in *Cubar v. Mendoza*,^[16] there was a reiteration of the controlling doctrine on the matter. This excerpt from the ponencia of Justice de Castro cannot be any clearer: "Private respondents argue that said service is not valid because Atty. Gonzaga had left Cebu City, his address of record, and has resided in Legaspi City. It is already well-settled rule that when a party is represented by counsel, notice should be made upon the counsel of record at his given address, to which notices of all kind emanating from the court should be sent in the absence of a proper and adequate notice to the court of a change of address."^[17] Thus the "notice of judgment rendered in the case [having been] served on the counsel of record [it] is, for all legal purposes, notice to the client, the date of receipt of which is considered the starting point from which the period of appeal prescribed by law shall begin to run."^[18] Two days later, another decision, *Aban v. Enage*,^[19] was promulgated by this Court. Justice Makasiar as ponente had occasion to restate the rule anew: "Unless the formalities required by the Rules of Court on valid substitution of attorneys are complied with, no substitution will be permitted and the attorney who appeared last in the case before such application for substitution will be regarded as the attorney of record and entitled to be notified of all notices and pleadings and responsible for the conduct of the case (*Olivares v. Leola*, 97 Phil. 352)."^[20] Thus the inherent weakness of case for petitioner becomes more apparent.

3. Petitioner labors under the misimpression that all is not lost. He would rely on the doctrine in *Aquiño v. Blanco*,^[21] where service on the counsel of record appointed assistant provincial fiscal was held deficient. The reliance is in vain. The facts of that case could easily be distinguished. Unlike in this case, the litigation there was still with the court of first instance of Iloilo. Precisely, the very question involved was whether an appeal should be allowed. Moreover, the counsel of record, Basilio Sorioso, was appointed as Assistant Provincial Fiscal of the same province of Iloilo. He was then occupying that position on February 11, 1947 when he was served notice of judgment of the lower court. This Court held no more than that under such circumstances he should be allowed to appeal. At that stage, it certainly would be unfair and unjust to deprive him of that opportunity. An appeal was a matter of right of which he should not be denied just because his counsel of record was negligent. As a matter of fact there was an affidavit to that effect coming from Fiscal Sorioso - something lacking, here. Compared to what transpired in this case, the contrast is quite manifest. Petitioner had been defended by counsel qualified to do so both at the trial and on appeal. Whatever defense he could offer then was judiciously passed upon by two courts. There is this further consideration that militated against the applicability of *Aquiño*. It may not be unreasonable to hold that a judge stationed in Iloilo could be presumed to know who are the assistant provincial fiscals. Obviously, it is an entirely different matter to rule than an appellate court sitting in Manila should likewise be presumed to know who is the fiscal for Iloilo. To so hold would be to extend the principle of judicial notice much beyond what reason dictates. It cannot be said therefore that there was a failure to abide by the controlling norm when respondent Court rejected the prayer for setting aside the entry of judgment.

4. Nor may the absence, not merely the paucity, of support in law for the stand of petitioner be cured by appeal to equitable considerations. In the motion to set aside the entry of judgment^[22] submitted to respondent Court on December 5, 1970, nothing whatsoever was said as to any fact or circumstance that would in any wise cast doubt on the correctness of the finding of guilt as well as the sentence imposed. The first pleading filed with this Court, namely where he asked for extension of time to file petition for certiorari,^[23] likewise suffered from that deficiency. The same thing can be said of the petition itself. He specified the issues thus: "1. Whether Atty. Benjamin Defensor was disqualified automatically as counsel for the defendant-appellant in the case on appeal with the Court of Appeals when he was appointed and had qualified as Provincial Fiscal of Iloilo; 2. Whether the

nomination, confirmation by the Commission on Appointments and the taking of oath of Atty. Benjamin Defensor as Provincial Fiscal of Iloilo needed to be published in the Official Gazette so that the Court of Appeals could be officially informed of these facts; 3. Whether the petitioner then defendant-appellant in CA-G.R. No. 06539-R was deprived of his right to due process under the circumstances obtaining in the case." [24] Even if therefore the entry of judgment would be set aside, still it would be an exercise in futility for a decision, that on its face revealed the painstaking care it was arrived at, to be modified, much less reversed. In *Florendo v. Florendo*, [25] it was held that there was no denial of procedural due process, where no meritorious defense was called to the attention of this Court.

WHEREFORE, the petition is dismissed for lack of merit.

Makasiar, Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.

[1] The other respondents are the Court of First Instance of Iloilo and the Provincial Sheriff of Iloilo.

[2] Petitioner's Urgent Motion for Extension of Time to File Petition for Certiorari, II(a).

[3] *Ibid*, II(d)(1).

[4] *Ibid*, (b).

[5] *Ibid*, (d).

[6] *Ibid*, (d), (e) and (f).

[7] Decision of respondent Court, 2-4.

[8] *Cf. Ibid*, 4-9.

[9] *Ibid*, 8-9.

[10] 10 Phil. 104.

[11] *Ibid*, 111.

[12] 47 Phil. 23. *Lopez* was subsequently cited in *Paguio v. Ruiz*, 93 Phil. 306; *Sicat v. Reyes*, 100 Phil. 505 (1956); *Gatmaitan v. Director of Public Works*, 100 SCRA 581 (1956); *Albert v. University Publishing Co.*, 121 Phil. 87 (1965); *Macabingkil v. Yatco*, 128 Phil. 165 (1967).

[13] 76 Phil. 72 (1946).

[14] *Ibid*, 87. *Cf. People v. Mui*, L-48875, October 21, 1982.

[15] 218 US 272. The opinion cited *Rogers v. Peck*, 199 U.S. 425 (1905) and *Twining v. New Jersey*, 211 U.S. 78 (1908).

[16] L-55035, February 23, 1983, 120 SCRA 768.

[17] *Ibid*, 772-773.

[18] *Ibid*, 773.

[19] L-30666, February 25, 1983, 120 SCRA 778.

[20] *Ibid*, 797, 798.

[21] 79 Phil. 647 (1947).

[22] Petition, Annex A.

[23] Urgent Motion for Extension of Time to File Petition for Certiorari filed on March 10, 1971.

[24] Petition, XXI, 5-6.

[25] L-24982, March 28, 1969, 27 SCRA 432.

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