

ELADIO CONTRATISTA, PETITIONER, VS. ARTEX DEVELOPMENT CO., INC., AND WORKMEN'S COMPENSATION COMMISSION, RESPONDENTS.*G.R. No. L-37324. October 26, 1977*

Ponente: CASTRO, C.J.

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This is a petition for review on certiorari of the resolution dated May 28, 1973 of the Workmen's Compensation Commission en banc which set aside the decision dated February 14, 1973 of one of its members affirming the decision dated January 2, 1970 of the Acting Referee of the Regional Office No. 8 of the Department of Labor in Cebu City, which decision awarded death and related benefits to Eladio Contratista in the total amount of P12,196.80.

On July 17, 1968 Eladio Contratista (hereinafter referred to as the claimant) filed with the Regional Office No. 4 of the Department of Labor in Manila a notice and claim for compensation against the Artex Development Co., Inc. (hereinafter referred to as ARTEX) for the death of his son Alexander who worked as a doffer at the textile mill of- ARTEX with a daily wage of p6.40. On August 13, 1968 the Acting Chief Referee of the Regional Office No. 4 notified ARTEX of the claim and requested it to submit its employer's report within ten days from receipt of the said notice: On September 13, 1968, ARTEX filed its report wherein it admitted knowledge of Alexander's death. Subsequently, the claimant requested the transfer of the case to the Regional Office No. 8 of the Department of Labor in Cebu City.

It appears that at about four o'clock in the afternoon of July 10, 1968, Alexander, with Cristobal Contratista (a co-employee), repaired to the store-boarding house managed by Anastacia Albino (mother of the personnel manager of ARTEX) inside the ARTEX compound at Barrio Panghulo, Malabon, Rizal. Inside the store-boarding house, Gervacio Antojado, one of Anastacia's helpers, stabbed Alexander. Shortly thereafter, members of the Malabon Police Department, called by Anastacia, arrived and arrested Alexander. Three of them brought Alexander to the municipal hall, but before reaching the said hall he died.

The Acting Referee, in a decision dated January 2, 1970, declared the death of Alexander compensable under the provisions of the Workmen's Compensation Act, as amended, and awarded death and related benefits. On motion for reconsideration tiled by ARTEX on the ground that the findings therein contradicted the evidence presented by the claimant, including the NBI certificate on the post-mortem examination of Alexander, the Acting Referee, in an order dated February 24, 1970, set aside the said decision and reopened the case for reception of ARTEX's evidence. On the date set for the reception of its evidence, ARTEX omitted to do so. Consequently, the Acting Referee, in a resolution dated September 2, 1970, set aside the order dated February 24, 1970, revived the decision dated January 2, 1970, and denied ARTEX's motion for reconsideration.

After referral of the decision of the Acting Referee to the Workmen's Compensation Commission for review, Associate Commissioner Eugenio I. Sagmit, in a decision dated February 14, 1973, affirmed the same. ARTEX

then, in a two-page motion, sought reconsideration by the Commission en banc of the decision of Commissioner Sagtit. ARTEX insisted on the non-compensability of Alexander's death, attaching to its motion a photostatic copy of the report of the Malabon Police Department dated July 13, 1968 regarding the circumstances resulting in Alexander's death.

Subsequently, the Commission en banc,[1] in a resolution dated May 28, 1973, set aside the decision dated February 14, 1973 of Commissioner Sagmit and absolved ARTEX from liability.

Hence, the present recourse.

1. At the outset, ARTEX points out that the claimant failed to file any notice of appeal with the Workmen's Compensation Commission as required by section 1 of Rule 43 of the Rules of Court. ARTEX contends that the failure of the claimant to comply with this requirement rendered the decision sought to be reviewed final and executory. This, then, according to ARTEX, precludes this Court from taking cognizance of the case at bar.

This contention is without merit. In *Vargas vs. Philippine American Embroideries Inc.*,[2] this Court, resolving the same jurisdictional problem, ruled that

"there is a difference in phraseology between ...section [1] of Rule 44 of the former Rules of Court and section 1 of Rule 43 of the present Rules, and this difference is by no means an inconsequential one. For while the former explicitly required a notice of appeal for the perfection of the appeal, the latter does not say so. Indeed, that a new perspective regarding the filing of the notice of appeal has been introduced is reflected in section 2 of Rule 43 of the present Rules which, while requiring the fact of the date of the filing on time of the petition for review to be stated on its face, does not demand that the same statement be made with respect to the fact of filing of the notice of appeal. The point clearly suggested then is that the filing of the notice of appeal is no longer compulsory. Indeed, were the filing of the notice of appeal an indispensable act, then the present Rules would have simply said so in the same manner that they do with regard to the petition for review."

2. The claimant points out that ARTEX failed to controvert his right to compensation within the period fixed by section 45[3] of the Workmen's Compensation Act, as amended. He alleges that although ARTEX knew of Alexander's death, it filed the prescribed form of controversion notice (the employer's report) only on September 13, 1968, sixty-five (65) days after it acquired knowledge of the decedent's death, and after the Acting Chief Referee of the Regional Office No. 4 had notified it of his claim and required it to submit the said report.

The failure of ARTEX to seasonably controvert the right of the claimant to compensation was brushed aside by the Commission en banc as "an issue of secondary importance." The Commission completely overlooked the significant consequence of such omission on the part of ARTEX. Indeed, section 45 of the Workmen's Compensation Act, as amended, explicit in its terms, states that failure of the employer to comply with the controversion requirement, in the form prescribed and within the period provided, "shall constitute a renunciation of his right to controvert the claim." [4] Guilty of delay in controverting the right of the claimant to compensation, ARTEX must be deemed to have waived its right to question the compensability of the death of Alexander as well as the validity or reasonableness of the claimant's aforesaid right. [5] To put it succinctly, ARTEX waived its right to interpose any defense, including that of non-compensability of the death of Alexander, and to prove anything in relation thereto. [6]

True it is that the Acting Chief Referee of the Regional Office No. 4 required ARTEX to submit its employer's report, the Acting Referee of the Regional Office No. 8 heard the case on the merits and scheduled a hearing purposely for reception of ARTEX's evidence, and the Commission en banc admitted in evidence the photostatic copy of the report of the Malabon Police Department ARTEX submitted to it as an annex to its motion for reconsideration of the decision of Commissioner Sagmit. All these, however, did not serve to effect

reinstatement of ARTEX's right of controversion.

For the employer to regain the right of controversion, section 45 of the Workmen's Compensation Act, as amended, and section 3 of Rule 8, Rules of the Workmen's Compensation Commission,[7] require the employer to file a petition under oath specifying therein the reasons for the failure to controvert the claimant's right to compensation. And on the basis of the reasons advanced by the employer, the may Commission may reinstate his right of controversion.[8]

In the case at bar, however, ARTEX made no move for the reinstatement of its lost right of controversion. Both the Acting Referee of the Regional Office No. 4, in his decision dated January 2, 1970, and Commissioner Sagmit, in his decision dated February 14, 1973, noted ARTEX's failure to controvert on time the claimant's right to compensation. Commissioner Sagmit even stressed ARTEX's failure to seek reinstatement of its lost right of controversion. Amply apprised of the necessity on its part to seek reinstatement of its lost right of controversion in the manner prescribed by section 45 of the Workmen's Compensation Act, as amended, and section 3 of Rule 8 of the Rules of the Workmen's Compensation Commission, ARTEX nevertheless failed to do so.

3. The claimant assails as erroneous the admission in evidence by the Commission en banc of the photostatic copy of the report of the Malabon Police Department submitted in the compensation proceedings for the first time by ARTEX as an annex to its motion when it sought reconsideration by the Commission en banc of the decision of Commissioner Sagmit. The claimant points out ARTEX never formally offered the copy of the police report in evidence during the hearing of the case on its merits nor during the hearing scheduled, after the reopening of the case by the Acting Referee of the Regional Office No. 8 at the instance of the said ARTEX, specifically for reception of its evidence. These omissions notwithstanding, the claimant avers, the Commission en banc considered the copy of the police report and predicated its factual findings solely on the basis thereof.

In its questioned resolution, the Commission en banc categorically names Alexander as the "assailant" and Anastacia and Gervacio as the "victims" in the stabbing incident inside the ARTEX compound. It states that three members of the Malabon Police Department "arrested" Alexander, then under custody of the ARTEX security guard, and brought him to the police headquarters. It relates that along M.H. del Pilar street, on the way to the police headquarters, Alexander "assaulted the policemen and it was at this time that after several attempts to stop him from further assault /failed7, Alexander Contratista was fired upon by Patrolman Bautista causing him to fall and die on the spot." The Commission en banc then concludes that "when Alexander Contratista died, he was not in the course of his employment nor can his death be attributed to a factor or cause incidental to his employment or an off-shoot of the same."

The Workmen's Compensation Commission enjoys ample discretion in the conduct of compensation proceedings. For, section 1 of Rule 10 of its Rules[9] frees it, in the hearing, investigation, and determination of any question or controversy in compensation cases, from the narrow constraints provided by technicalities, legal forms, and technical rules of evidence.[10] However, such discretion of the Commission in its procedural operations in no way includes the license to capriciously disregard substantial, nay essential, evidentiary rules designed to insure an irreducible minimum of fair play. Among these rules is that which dictates that all parties must be fully apprised of the evidence submitted for consideration and must be afforded opportunity to object to the evidence adduced or to proffer evidence in explanation or rebuttal. In the case at bar, the Commission en banc admitted and thereafter considered the photostatic copy of the report of the Malabon Police Department (submitted to it by ARTEX as an annex to its motion for reconsideration of the decision of Commissioner Sagmit) without according the claimant any opportunity at all to object to it or to present evidence in explanation or rebuttal. Consequently, the submitted copy of the police report should not have been considered at all by the Commission en banc.[11]

Other circumstances emasculate the probative value of the report of the Malabon Police Department.

The Acting Referee rendered his decision in favor of the claimant on January 2, 1970. Subsequently, on motion for reconsideration filed by ARTEX, the Acting Referee, in an order dated February 24, 1970, set aside his decision and reopened the case for reception of ARTEX's evidence. ARTEX failed to submit its evidence on the date scheduled for the purpose. Consequently, the Acting Referee, in a resolution dated September 2, 1970, revived his decision in favor of the claimant.

Commissioner Sagmit rendered his decision affirming that of the Acting Referee on February 14, 1973. ARTEX sought reconsideration by the Commission en banc of Commissioner Sagmit's decision on March 9, 1973. To its motion for reconsideration ARTEX attached a photostatic copy of the police report involved herein.

Significantly, ARTEX presented the copy of the police report as evidence only after the lapse of more than three (3) years after the Acting Referee had rendered his decision, and after Commissioner Sagmit had rendered his. It seems rather strange that ARTEX, despite the opportunity afforded it when the Acting Referee reopened the case and despite the long intervening period from January 2, 1970 (when the Acting Referee rendered his decision) to February 14, 1973 (when Commissioner Sagmit rendered his decision) failed or omitted to seasonably submit in evidence the copy of the police report. True it is that the members of the Malabon Police Department who executed or prepared the police report could still be called to identify it, authenticate it, and testify on the circumstances attendant to its execution or preparation as well as on the contents thereof, but could such testimony, particularly with reference to the contents of the said report, be at all reliable, considering that no factor more strongly tends to obscure memory than the lapse of time?

Moreover, ARTEX offers no explanation whatsoever for its delay in presenting the copy of the police report. It merely attached a photostatic copy of the said report to its motion for reconsideration of Commissioner Sagmit's decision. Could it not then be that ARTEX presented the copy of the report as a mere afterthought, expectant that the same might sway the Commission en banc in its favor?

More, the verity of the factual recitals in the police report is open to serious doubt. The report pinpoints Alexander as the "assailant" not only of Gervacio Antojado but also of the three members of the Malabon Police Department who were taking him to the police headquarters. Alexander's assault on the policemen, according to the report, prompted the said policemen to shoot him. Under the circumstances, would an unarmed and wounded man risk his life by challenging the combined armed might of three policemen? And, even assuming that Alexander "assaulted" the three policemen, could it be said that in shooting him they employed reasonable means to repel Alexander's "assault"? The policemen could have easily overwhelmed Alexander without resort to unjustified violence.

The facts that a member of the Malabon Police Department conducted the inquiry into the circumstances attendant to Alexander's death and that he likewise prepared the police report strongly suggest a disposition, in the reporting, in favor of his colleagues in the service. For, as aptly observed by Commissioner Sagmit ?

"Nothing is more natural than for the police investigators, under a mis-guided esprit de corps, to shield their own co-policemen from a report that would indict them for the crime of homicide, if not cold-blooded murder of a 'suspect' who was a plain nobody and a transient in Malabon. Under the circumstances, it was not difficult for the 'killer' policemen to concoct a story to justify their felony considering that Alexander was alone and unarmed against three armed policemen of the so-called Malabon's finest x x x."

All these considerations subject to grave doubt, to an immeasurable extent, the veracity of the account in the police report regarding the circumstances surrounding Alexander's death. Indeed, if the report reflected with fidelity and accuracy the incident involving Alexander and the three policemen, there could have been no reason

then for ARTEX to have delayed presenting in evidence the said report.

4. The claimant takes exception to the finding of the Commission en banc that "when Alexander Contratista died, he was not in the course of his employment nor can his death be attributed to a factor or cause incidental to his employment or an off-shoot of the same."

Of course, the Commission en banc here refers to the death of Alexander as the result of his alleged assault on the policemen who were taking him to the police headquarters. And this death occurred on the way to the said headquarters, not in or about the premises of ARTEX.

Suffice it to reiterate that the Commission en banc predicated its factual findings solely on the basis of the copy of the police report. And, as heretofore discussed, the copy of the report carries no probative value, considering all the highly suspicious and dubious circumstances attendant to its preparation and submission, which circumstances in effect negate the veracity of the factual recitals therein.

There only remains, then, on record, the evidence presented at the hearing before the Acting Referee. The totality of this evidence establishes that at about four o'clock in the afternoon of July 10, 1968, Alexander, with a co-employee, repaired to the store-boarding house managed by Anastacia inside the ARTEX compound. Inside the store-boarding house, one of Anastacia's helpers stabbed Alexander. Anastacia sought help from the Malabon Police Department. When the three policemen arrived, they took Alexander, instead of Anastacia's helper who stabbed him, into custody and brought him to the municipal hall. Before reaching the said hall, Alexander died.

That Alexander wanted to take refreshments to satisfy his thirst or to relieve his hunger may be reasonably inferred from the fact that he repaired to the store-boarding house inside the ARTEX compound during walking hours. True it is that the act of taking refreshments constitutes more a personal act rather than an act of service. This notwithstanding, an act and other acts of an employee necessary to his life and comfort while at work as well as conducive to the proper conduct of his work constitute acts related to his employment. And any injury and the ensuing death occurring while in the performance of such acts can be justifiably characterized as compensable for having arisen out of and in the course of the employment.

In the case at bar, it matters none that Alexander's death occurred on the way to the municipal hall or outside his place of employment. For, Alexander's death resulted from a compensable injury he suffered within his place of employment while he was engaged in an act related thereto. And even conceding as true that Alexander's death resulted from the fatal wound he sustained when the policemen taking him to the police headquarters shot him because he allegedly assaulted them, still his death bears intimate connection with the original injury. For, without the original injury -- the stabbing -- which started the chain of causation, Alexander's death at the hands of the policemen would not have resulted.

ACCORDINGLY, the resolution dated May 28, 1973 of the Workmen's Compensation Commission en banc is hereby set aside, and the respondent Artex Development Co., Inc. is hereby ordered:

1. To pay the claimant Eladio Contratista the amount of P1,996.80 as death benefits and the amount of P200 as burial expenses, or the total amount of TWO THOUSAND ONE HUNDRED NINETY SIX PESOS AND EIGHTY CENTAVOS (P2,196.80) in lump sum;
2. To pay the counsel for the claimant the sum of P219.68 (equivalent to ten percent of the adjudged amount) as attorney's fees; and
3. To pay the Workmen's, Compensation Fund the amount of TWENTY PESOS (P20) in the concept of administrative fees.

Costs against the Artex Development Co., Inc.

The Clerk of Court is hereby directed to furnish a copy of this decision as well as a copy of the Malabon police report adverted above to the Secretary of Justice for such action on as he may deem warranted in the premises.

Makasiar, Martin, Fernandez, and Guerrero, JJ., concur.

Teehankee, J., concurs and files a separate opinion.

Muñoz Palma, J., concur on the basis of the principle of non-controversion.

[1] Commissioner Sagmit filed his dissenting opinion.

[2] L-23762, August 31, 1970, 34 SCRA 680.

[3] Section 45, in part, reads: "In case the employer decides to controvert the right to compensation, he shall, either, on or before the fourteenth day of disability or within ten days after he has knowledge of the alleged accident, file a notice with the Commissioner, on a form prescribed by him, that compensation is not being paid, giving the name of the claimant, name of the employer, date of the accident and the reason why compensation is not being paid. Failure on the part of the employer or the insurance carrier to comply with this requirement shall constitute a denunciation of his right to controvert the claim unless he submits reasonable grounds for the failure to make the necessary report, on the basis of which grounds the Commissioner may reinstate his right to controvert the claim."

[4] Caltex (Philippines) Inc. vs. Villanueva, L-15658, August 21, 1961, 2 SCRA 995; Insular Lumber Company vs. Workmen's Compensation Commission, L-25756, January 24, 1975, 62 SCRA 105.

[5] Tan Lim Te vs. Workmen's Compensation Commission, 104 Phil. 522; Talisay-Silay Milling Co., Inc. vs. Workmen's Compensation Commission, L-22096, September 29, 1967, 21 SCRA 366; National Development Company vs. Galamgam, L-29634, April 29, 1971, 38 SCRA 495; Development Bank of the Philippines vs. Workmen's Compensation Commission, L-30428, February 7, 1973, 49 SCRA 365.

[6] Manila Railroad Co. vs. Workmen's Compensation Commission, L-19377, January 30, 1974, 10 SCRA 41; La Mallorca vs. Workmen's Compensation Commission, L-29315, November 28, 1969, 30 SCRA 613; Atlas Consolidated Mining and Development Corporation vs. Workmen's Compensation Commission, L-22439, May 29, 1970, 33 SCRA 132; General Textiles Inc. vs. Taay, L-29348, November 29, 1971, 42 SCRA 375; Development Bank of the Philippines vs. Workmen's Compensation Commission, L-30428, February 7, 1973, 49 SCRA 365.

[7] Section 3 of Rule 8 of the Rules of the Workmen's Compensation Commission reads:

"An employer or carrier who has failed to controvert the right to compensation within the period and in the manner stated in the preceding sections may file with the Unit before the award is rendered or before such award has become final, a petition under oath specifying therein the reasons for his failure to controvert the right to compensation and the grounds relied upon, in which case the Unit may, upon reasonable grounds, reinstate the employer's right to controvert. Upon the re-instatement of the employer's right to controvert, he shall be required to file, within five (5) days from notice, the required employer's report, if he has not done so."

[8] Agustin vs. Workmen's Compensation Commission, L-19957, September 29, 1964, 12 SCRA 55; Magalona vs. Workmen's Compensation Commission, L-21849, December 11, 1967, 21 SCRA 1199; Seven-Up Bottling Company of the Philippines vs. Tero, L-31995, February 12, 1973, 49 SCRA 378.

[9] Section 1 of Rule 10 of the Rules of the Workmen's Compensation Commission reads:

"The hearing, investigation and determination of any question or controversy in workmen's compensation cases shall be without regard to technicalities, legal forms and technical rules on evidence. Substantial evidence, whenever necessary, shall be sufficient to support a decision, order or award."

[10] A.D. Santos vs. Dabocol, L-19051, November 23, 1966, 18 SCRA 744; Layag vs. Republic of the Philippines, L-23640, May 22, 1968, 23 SCRA 646.

[11] Magalona vs. Workmen's Compensation Commission, supra. Vide Aboitiz Shipping Corporation vs. Pepito, L-21335, December 17, 1966, 18 SCRA 1028.

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SEPARATE CONCURRING OPINION

TEEHANKEE, J.:

I concur. Aside from the respondent-employer's failure to seasonably controvert the claim and the consequent waiver of all jurisdictional defenses, it seems clear that the chain of tragic events resulting in the death of petitioner's son, Alexander Contratista, arose out of and in the course of Alexander's employment during working hours and has therefore been properly held to be compensable.

What is most disturbing in this case, however, are the highly questionable acts of the three policemen from the Malabon Police Department. They had been summoned to the store-boarding house where the deceased employee Alexander Contratista had been stabbed by a store helper Gervacio Antojado, and yet instead of taking custody of Gervacio Antojado, they arrested the stabbing victim Alexander and were taking him to police headquarters instead of to the hospital. Worse, according to the police report itself, on the way to the police headquarters Alexander allegedly "assaulted the policemen and it was at this time that after several attempts to stop him from further assault [failed], Alexander Contratista was fired upon by Patrolman Bautista, causing him to fall and die on the spot" (at page 7, main opinion). Certainly, under these circumstances the shooting to death of Alexander to stop his alleged assaults could hardly be deemed justifiable.

Thus, the Chief Justice plainly states in his main opinion that "the verity of the factual recitals in the police report is open to serious doubt" (at page 9) and cites Commissioner Sagmit's rejection of the police report as a "concoction" to "shield" the three policemen from "the crime of homicide, if not cold-blooded murder of a 'suspect' who was a plain nobody and transient in Malabon" and "to justify their felony considering that [Alexander] was alone and unarmed against three armed policemen of the so-called Malabon's finest x x x." (at page 10).

The uncalled for acts on the part of the three peace officers who, having arrested and taken into their custody the very stabbing victim and named him in their report as the "assailant" and the stabber as the "victim", killed him on the spot in the course of taking him to police headquarters instead of to the hospital are therefore properly referred to the Department of Justice for proper investigation and prosecution as facts may warrant.

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