

JESUS A. TAPALES, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-38715. January 31, 1983

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a petition for review of the Decision of the Court of Appeals in CA-G.R. No. 06867-CR[1] modifying the judgment of the City Court of Manila, Branch VI, in Criminal Case No. F-065793 for Serious Physical Injuries, convicting petitioner-accused, Jesus A. Tapales, of said crime.

Petitioner Tapales was charged in an Information filed with the City Court of Manila which alleged as follows:

"That on or about June 26, 1962 in the City of Manila, the said accused did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon one Dr. Melquiades G. Virata by then and there boxing him on his face, and other parts of his body, kicking him and strangling him, thereby inflicting upon the latter physical injuries which have required and will require medical attendance for a period of more than thirty days and which have prevented and will prevent the said Dr. Melquiades G. Virata from performing his customary labor for the same period of time."

The decision sought to be reviewed recites the version of the prosecution as follows:

"The evidence on record shows that at about 1:30 P.M. of June 26, 1962, complainant Melquiades G. Virata went to the Philippine National Bank, Escolta, Manila, to make some arrangements in its Loan and Discount Department at the fourth floor, regarding his obligation with the said bank. Because the manager of the department was not around, Virata left the room. On his way to the elevator, he was met by accused Jesus Tapales, his former private secretary who served him back in 1961 when Virata was campaigning for his election as congressman for the first district of Rizal. Tapales thereupon demanded from the complainant the amount of P14,000.00 as commission for the approval and release of the latter's loan from the GSIS, constituting 10% of the total sum of P114,000.00. When the complainant refused, the accused boxed him on the face, kicked and strangled him. The complainant felt dizzy. Blood flowed from his nose. He was given first aid treatment in the Bank's clinic where he was placed on an operation table, given an injection, and his face bandaged. He was brought to the North General Hospital where he was treated for nasal injury. His attending physician, Dr. Sergio Mendoza, found markedly depressed the bone at the right lateral side of his nose, which the doctor corrected so that he could breathe normally. According to a medical certificate issued by Dr. Mendoza the injury would heal from two to three weeks. (Exh. A).

"Against the advice of Dr. Mendoza, the complainant left the hospital to have a photographer in Caloocan City take pictures of his injuries. Another doctor, Dr. Gelus, a friend and family physician of the complainant, treated his swollen ankle. Dr. Meneses of Quezon Boulevard, a specialist, also attended to his fractured nose."

The appellant's version invoking self-defense is likewise narrated in the decision, to wit:

"The appellant invoked the claim of self-defense, admitting having given the complainant a fist blow allegedly to protect himself from the attack of complainant. According to appellant's version of the incident, at about

1:30 in the afternoon of June 26, 1962, he dropped by at the PNB to pay the loan of his father-in-law Victor Gozon. When he got out of the elevator on the fourth floor of the Bank's building, Dr. Virata approached him and furiously said: 'Poñita ka, bakit ka tawag ng tawag kay Cora' ('referring to Corazon Dionisio, the common-law wife of Mr. Melquiades Virata'). Amazed and stunned, the accused replied: 'Hindi ako tumatawag, huwag kang magagalit at pagusapan natin ito sa labas ng banko. Huwag kang mageskandalo.' Notwithstanding these protestations, Dr. Virata grabbed the shirt of Tapales, tore both his shirt and his undershirt, and said, 'You have been calling my wife.' The appellant answered, 'No, if ever I called your wife, it is purely only in my official capacity as private secretary of the M.G. Virata Buttons Factory.'

"Virata nonetheless continued to hit him 'left and right' and then struck him with his portfolio. Tapales moved backward and parried the complainant's blows. Unable to hit him, Virata tried to open his portfolio. At this juncture, the appellant struck him with his right hand on the left jaw, in the belief that the complainant was reaching in for a gun. The complainant fell down unconscious, with his face flat on the floor. Later, when he stood up, blood was coming out of his nose. At that moment, a security guard of the bank arrived and the complainant was led to the PNB clinic while the appellant was brought to the office of the security guard at the ground floor for investigation. Thereafter, the appellant was taken to the police station. The appellant allegedly suffered contusions on his body as a result of the fist blows he received." [2]

After trial, the City Court rejected petitioner's plea of self-defense and rendered a decision dated July 10, 1965 finding him guilty as charged, the dispositive portion of which reads thus:

"Accordingly, judgment is hereby rendered finding the accused Jesus Tapales guilty of the crime of serious physical injuries as charged in the information, and he is hereby sentenced to suffer one (1) year, eight (8) months and twenty-one (21) days of prision correccional, with costs.

"SO ORDERED." [3]

On appeal, respondent Court of Appeals took into account the mitigating circumstance of voluntary surrender in rendering its judgment as follows:

"WHEREFORE, the decision appealed from is hereby modified, and judgment is hereby rendered finding the appellant Jesus Tapales guilty beyond reasonable doubt of the crime of serious physical injuries described in paragraph 4 of Article 263 of the Revised Penal Code, sentencing him to suffer the penalty of eleven (11) months and one (1) day of prision correccional, ordering him to indemnify the complainant in the sum of P1,000.00 as and for moral damages, and to pay the costs." [4]

The following errors are raised in petitioner's Brief:

- Respondent Court of Appeals erred in imposing upon petitioner a penalty of eleven (11) months and one (1) day of prision correccional.
- Respondent Court of Appeals erred in finding petitioner guilty of the crime of serious physical injuries, instead of slight physical injuries, or, at most, of less serious physical injuries, in line with the decisions of this Honorable Court and of the Honorable Court of Appeals.
- Respondent Court of Appeals erred and gravely abused its discretion in disregarding or ignoring the testimony of eyewitness Francisco de los Reyes in the face of the diametrically opposed versions of complainant and of petitioner as to their fight and its motive.
- Respondent Court of Appeals erred in finding petitioner guilty and thereby convicting him on the basis of insubstantial or conjectural evidence. [5]

To begin with, We find no merit in petitioner's contention that his conviction was based by respondent Court on insubstantial or conjectural evidence. The offended party himself testified on the incident in detail. [6] His

testimony was amply corroborated by a Medical Certificate dated June 26, 1962 issued by Dr. Sergio Mendoza, EENT consultant of the North General Hospital who attended to complainant's nasal injuries;[7] the testimony of Dr. Mendoza;[8] a photograph taken of complainant after the incident showing his injuries;[9] the blood-stained barong, handkerchiefs and towels used by complainant;[10] and a photograph of the aforesaid blood-stained clothing.[11] Moreover, in concurring with the trial court's observation that petitioner's "theory of 'self-defense' does not inspire credence," the Court of Appeals held that:

"... there is no showing of actual, real and imminent danger at the time the accused delivered the fist blow on the offended party, since complainant 'is an old man of 70 years of age, while the accused is 38 years old, big, strong, and husky and any physical assault against the person of the appellant would be unavailing. Indeed, the accused, even according to his own version, could easily maneuver himself out of reach and a single blow could render the offended party powerless, as the defense claimed it did.'"[12]

We affirm the rejection by respondent Court of appellant's claim of self-defense, considering the age difference of the complainant and petitioner and the latter's build and apparent physical strength as observed by the trial court. Certainly, a man of complainant's age would prove no match to petitioner who was not only much younger, but also stronger. This being so, it would be difficult to believe that complainant had been the aggressor, hitting petitioner "left and right" and striking him with a portfolio.

Furthermore, the following points raised by herein respondent People, as appellee in the Court of Appeals, are well taken, to wit:

"... In the first place, according to appellant, his polo shirt and undershirt were torn by complainant. These shirts were not presented as evidence, appellant claiming at the trial that he left them at home and reserved the right to produce them (pp. 15-16, tsn, April 21, 1965). They were, however, never produced. Secondly, according to appellant, he sustained contusions in his body and was advised by the police to secure a medical certificate (pp. 27-28, tsn, April 21, 1965). No medical certificate was presented by appellant, much less is there a showing that he was treated for contusions by a doctor. In the third place, according to appellant he reported the incident at the PNB to the police, when he was taken to the station. If this be so, he should have shown to the police his torn polo shirt and undershirt and the contusions he had received in the hands of complainant. No one from the police testified on this matter in behalf of appellant. Indeed, if he were the victim of aggression, appellant should have filed a complaint against complainant with the police for assault or physical injuries. There is no showing that he did and that the police had ever filed any complaint against complainant at the instance of appellant. Again, according to appellant, he struck complainant with his fist in the left jaw, and as a result thereof, complainant fell on his face on the floor. Appellant, however, had no explanation how complainant sustained a fracture on the lateral side of his nose. Dr. Mendoza who treated complainant categorically stated that the fracture of complainant's nose could not be caused even if complainant fell on his face unless there was a hard protruding object on the floor which hit the side of the nose (p. 18, tsn, Nov. 13, 1964). There is no pretense that the PNB floor had a protruding object that broke complainant's nose when he fell down. On the other hand, Dr. Mendoza opined that the nose injury could have been caused by a fist blow (p. 7, tsn, Nov. 13, 1964). Complainant declared that he was boxed on the nose by appellant causing it to bleed profusely (pp. 3, 4, 6, tsn, Oct. 26, 1964). Finally, according to appellant, he struck complainant because he suspected the latter had a gun inside his portfolio which complainant intended to use against him. Appellant was obviously thinking of an imaginary gun. There is no evidence that he ever told the security guard nor the police about this gun in the portfolio. Furthermore, appellant admits that he did not ask the security guard to search the portfolio of complainant for the gun (p. 27, tsn, April 21, 1965). No evidence has been shown regarding the fact whether complainant really owned a gun — for appellant had not seen it himself — by checking the records of the P.C. (pp. 5 to 7, Appellee's Brief)."[13]

The evidence establish beyond reasonable doubt that petitioner attacked and assaulted complainant without sufficient provocation, inflicting upon the latter physical injuries.

We hold that the failure to mention in the Decision under review the testimony of witness Francisco de los Reyes which is complained of by herein petitioner in his third assignment of error, does not necessarily mean that the appellate court disregarded or ignored said evidence. When respondent court pronounced in its Decision that "(a)fter a close scrutiny of the records, this Court finds unsatisfactorily established by clear, positive and convincing evidence the basic elements of self-defense,"[14] and when the same court said "(w)e are fully convinced that the evidence on record is in accordance with the facts unfolded by the prosecution, both antecedent as well as concomitant,"[15] it must be deemed that all the evidence, both documentary and testimonial including the testimony of defense witness Francisco de los Reyes, had been closely scrutinized and studied by the appellate court in deciding the appeal before it. It need not be stated that courts are not bound to accept mechanically as true the declarations of alleged eyewitnesses. Their testimonies are examined and weighed as any other piece of evidence which forms part of the record. And in the instant case, respondent Court of Appeals as did the trial court, after so examining and weighing all the evidence found the guilt of the accused to have been established by the required quantum of proof.

In raising the issue of which version to accept and believe, petitioner has to contend with the oft-repeated fundamental rule in criminal as well as in civil cases that in the matter of credibility of witnesses, the findings of the trial court are given great weight and the highest degree of respect by the appellate court.[16] The reason, of course, is that the trial court is in a better position to decide the question, having seen and heard the witnesses themselves and observed their deportment and manner of testifying during the trial.

We find no merit in petitioner's contention that the prosecution failed to prove beyond every reasonable doubt an essential element of the crime namely, that "the physical injuries inflicted shall have caused the illness or incapacity for labor of the injured person for more than 30 days" as required in Article 263, par. 4 of the Revised Penal Code. In this regard, the respondent Court of Appeals found that:

"... the complainant was actually ill as a result of those physical injuries for more than thirty days. On October 26, 1964 when he testified, Virata was still suffering and in pain:

'Q

These injuries sustained by you, can you tell us how long did it take before they completely healed?

A

To tell you, Judge, until now I am suffering in that accident because I am an old man and have plenty of blood coming out of the fractured bone of my nose. My nose was high like that and now it is flat. You can just imagine how. . . .

Q

What I mean, Mr. Witness, is the actual injuries. How long did it take before they completely healed? The external injuries.

A The external injuries, the swollenness of my feet and face. . .

Q How long?

A

More than 10 days, but the fracture of my nasal bone until now I am suffering. (pp. 6 & 7, tsn, Oct. 26,

1964)."[17]

In other words, respondent Court concluded from the above underscored statement of complainant Virata that his injuries lasted for more than thirty days. We affirm the appellate court's conclusion.

The cases cited by petitioner are not in point for in all these cases, there was no proof as to the number of days of illness of the victim or his incapacity for labor unlike in the case at bar where from the testimony quoted above and the observation of the trial court, it is evident that where the external injuries, the swelling of the complainant's face and feet took more than ten days to heal, he continued to suffer from the internal injuries (fracture of the nasal bone) even as of the time he testified on October 26, 1964, or more than two years from the incident which happened on June 26, 1962, plenty of blood was still coming out of his nose indicating that his internal injuries in the nose had not completely healed. We, therefore, find no error committed by the respondent court in convicting petitioner of serious physical injuries under paragraph 4, Article 263, Revised Penal Code.

We affirm the respondent court's appreciation of the mitigating circumstance of voluntary surrender in favor of herein petitioner, as also found by the trial court. He is, therefore, entitled to the benefits of this mitigating circumstance, the penalty imposed upon him being the minimum period of arresto mayor in its maximum period to prision correccional in its minimum period, or four (4) months and one (1) day to two (2) years and four (4) months. Since the minimum period of the above penalty is four (4) months and one (1) day to one (1) year, the penalty imposed by the appellate court which is eleven (11) months and one (1) day of prision correccional, is correct. The imposition of P1,000.00 as and for moral damages to be paid by the petitioner is likewise justified and We affirm the same.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the Decision appealed from is hereby **AFFIRMED**. Costs against the petitioner.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., De Castro and Escolin, JJ., concur.

Abad Santos, J., I concur but I believe a denial of the petition by minute resolution would be sufficient.

[1] Tenth Division, Puno, R., J., ponente; Fernandez, R.C. and Plana, E., JJ., concurring.

[2] Decision of the Court of Appeals, pp. 2-5; Annex "C" of Petition; Rollo, pp. 75-78.

[3] Decision of the City Court, Appendix to Brief of Accused-Appellant (Petitioner) in the Court of Appeals, Annex "B" to Petition; Rollo, p. 71.

[4] Decision of the Court of Appeals, pp. 11-12; Rollo, pp. 84-85.

[5] Brief for Petitioner, pp. 5-6; Rollo, p. 126.

[6] T.S.N. of Hearing on October 26, 1964, pp. 2-20.

[7] Exh. "A" for the Prosecution; Original Records, p. 106.

[8] T.S.N. of Hearing on November 13, 1964, pp. 2-26.

[9] Exh. "C"; Original Records, p. 108.

[10] Exhs. "D", "D-1", "D-2", "E", "E-1", "F" and "F-1", in an envelope forming part of the records in the lower court.

[11] Exh. "G"; Original Records, p. 109.

[12] Decision of the Court of Appeals, pp. 5-6, quoting from the Decision of the City Court; Rollo, pp. 78-79.

[13] Quoted in the Decision of the Court of Appeals, pp. 6-7; Rollo, pp. 79-80.

[14] Decision of the Court of Appeals, p. 5; Rollo, p. 78, italics supplied.

[15] Decision of the Court of Appeals, p. 7; Rollo, p. 80.

[16] *People vs. Cabeltes*, 91 SCRA 208, 216; *People vs. Advincula*, 96 SCRA 875, 882; *People vs. Ramos*, 96 SCRA 903, 911-912; *People vs. Mercado*, 97 SCRA 232, 348; *People vs. Lacson*, 102 SCRA 457, 463; *People vs. Garcia*, 105 SCRA 325, 342; *People vs. Mendoza, et al.*, 105 SCRA 459, 491; *People vs. Hilario*, 113 SCRA 291, 300; *People vs. Regala*, 113 SCRA 613, 652-654.

[17] Decision of the Court of Appeals, pp. 10-11; Rollo, pp. 83-84, italics supplied.

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