

VICENTE PALU-AY, PETITIONER, VS. COURT OF APPEALS, HON. EDGAR D. GUSTILO, PEOPLE OF THE PHILIPPINES AND DOMINGO PULMONES, RESPONDENTS.*G.R. No. 112995. July 30, 1998*

Ponente: MENDOZA, J.

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Petitioner seeks a review of the decision^[1] of the Court of Appeals dismissing a petition for annulment of the judgment in Criminal Case No. 20974 which he had filed in the Regional Trial Court of Iloilo, Branch 28. Petitioner contends that the trial court decided the case outside the issues made out by the pleadings and, therefore, acted without due process. Consequently, the Court of Appeals should have annulled the trial court's decision.

It appears that at about 5:30 p.m. in the afternoon of March 30, 1986, petitioner Vicente Palu-ay and private respondent Domingo Pulmones were having drinks with Edgar Soldevilla, Jonathan Fernandez, Efren Lauron, Basilio Pulmones, and Tirzo Superio at the house of Nelson Irecillo when a gun (a .38 caliber Super) being held by Pulmones went off near the face of petitioner. As a result, petitioner sustained serious injuries which could have been fatal had it not been for timely medical attention given to him. As a result of the incident, petitioner's face was paralyzed.

An information for frustrated homicide, later amended to frustrated murder, was filed with the Regional Trial Court of Iloilo, Branch 28 against private respondent. Private respondent pleaded not guilty, whereupon trial was held.

The prosecution presented evidence showing that while petitioner and private respondent were having drinks with their group, Emeterio Dermil tried to join but was sent away by private respondent for the reason that it was a family affair the group was having. Dermil resented what he had been told and gave private respondent an angry look. For this reason, Pulmones stood up to confront Dermil, but the latter ran away. Pulmones tried to run after him but was unable to catch him. Pulmones returned to the group about five minutes later holding a gun and shot petitioner with it. Petitioner asked Pulmones why he shot him (petitioner) as Pulmones ran away.

The defense corroborated the version of the prosecution up to the point where Pulmones tried to run after Dermil. However, it is claimed by the defense that as Pulmones tried to rejoin the group, he saw a gun tucked at the back of Efren Lauron. He took it with the intention of entrusting it to petitioner. As he was showing the gun which he had placed on his palm to petitioner, however, the latter turned to look at him, whereupon petitioner's face touched the gun and it went off. The defense, therefore, claimed that the shooting of petitioner was merely accidental for which reason private respondent incurred no criminal liability.

On March 27, 1991, the trial court rendered a decision finding private respondent Domingo Pulmones guilty of serious physical injuries through reckless imprudence; sentencing him to suffer imprisonment ranging from 6 months of arresto mayor, as minimum, to 4 years and 2 months of prision correccional, as maximum; and

ordering him to indemnify petitioner in the amount of P264,424.040 as actual damages, P50,000.00 as moral damages for the permanent disability of petitioner, P20,000.00 as exemplary damages, and P10,000.00 as attorney's fees, and to pay the costs.

The trial court found that Pulmones had no motive to do petitioner harm, let alone kill him, noting that petitioner and private respondent were "close friends and relatives and had no quarrel . . . prior to the incident in question." They were with the same group drinking on the occasion of the barangay fiesta. The trial court held that, in all probability, Pulmones' finger was resting on the trigger when he showed the gun to petitioner, so that when petitioner turned to look at him, his cheek touched the gun and Pulmones accidentally pressed the trigger.

Pulmones did not appeal his conviction and the decision became final and executory. On April 18, 1991, he filed an application for probation which the trial court granted on May 24, 1991.

On April 29, 1993, petitioner filed this case for annulment of judgment with the Court of Appeals. The case was, however, dismissed. In its decision rendered on December 9, 1993, the Court of Appeals held that petitioner could not validly file a petition for annulment of judgment without the approval of the Solicitor General; that the petition was an attempt to secure review of a final and executory decision of the trial court; and, that a review of the case would expose the accused to double jeopardy.

Hence, this petition. Two issues are raised: (1) whether or not the petitioner has personality to file a petition for annulment of judgment and, (2) if so, whether the judgment should be annulled.

First. Petitioner contends that the appellate court erred in ruling that a private complainant cannot file a petition for annulment of judgment without the Solicitor General's approval except only as to the civil aspect of the case. He invokes the ruling in *People v. Santiago*[2] in which this Court sustained the right of the private complainant in a criminal case to file a petition for certiorari to set aside the judgment rendered in the criminal case on the ground that the prosecution had been deprived of due process. This Court made it clear, however, that such action may be brought by the private complainant only insofar as the civil aspect of the case is concerned:

It is well-settled that in criminal cases where the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability. Thus, in the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General. Only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not take such appeal. However, the said offended party or complainant may appeal the civil aspect despite the acquittal of the accused.

. . . The complainant has an interest in the civil aspect of the case so he may file such special civil action questioning the decision or action of the respondent court on jurisdictional grounds. In so doing, complainant should not bring the action in the name of the People of the Philippines. The action may be prosecuted in the name of said complainant.[3]

In this case, petitioner's action does not concern the civil aspect of the case but the validity of the judgment itself. Indeed, petitioner does not actually question the award of damages. What he contends is that the trial court decided the case outside the issues made out by the pleadings and thereby deprived the prosecution of due process. The Solicitor General, in representation of the State, disagrees. He claims that "all the requisites or conditions of due process are present in this case." [4]

The very case of *People v. Santiago* cited by petitioner in support of his claim of standing refutes such claim.

Second. This case seeks the annulment of a final judgment rendered in a criminal case. The governing rule is stated, thus:

Under the present procedure, aside from the reliefs provided in these two sections (Secs. 1 & 2, Rule 38), there is no other means whereby the defeated party may procure final and executory judgment to be set aside with a view to the renewal of the litigation, unless (a) the judgment is void for want of jurisdiction or for lack of due process of law, or (b) it has been obtained by fraud.” (1 Moran’s Rules of Court 1950 Ed., p. 697, citing *Anuran v. Aquino*, 38 Phil. 29; *Banco Español-Filipino v. Palanca*, 37 Phil. 921). Reason of public policy which favors the stability of judicial decisions are mute in the presence of fraud which the law abhors (*Garchitorena v. Sotelo*, 74 Phil. 25).[5]

In the case at bar, it is contended that the decision of the Regional Trial Court of Iloilo in Criminal Case No. 20974 should be annulled because it is based on an issue not made out during the trial. Petitioner states:

So, the factual issue presented by the evidence is whether Pulmones fired the gun deliberately and treacherously at Palu-ay as claimed by the prosecution, or he showed the gun to Palu-ay on his open palm but it exploded hitting the latter as claimed by the defense. Therefore, when respondent Court found that the gun fired because Pulmones recklessly showed it to Palu-ay with his finger on the trigger, it went outside the factual issues raised by the parties, hence, it acted on an issue where the parties were not heard, hence, respondent court acted without due process of law or without jurisdiction.[6]

The question before the trial court was whether the shooting was deliberate or intentional, as the prosecution claimed it was, or accidental, as the defense contended it was. Private respondent (accused in the criminal case) claimed he was holding the gun on the palm of his hand, showing it to petitioner, when it accidentally fired because petitioner’s face hit it.

The trial court could not believe the prosecution’s claim that the shooting was deliberate or intentional because of the lack of motive for Pulmones to kill petitioner who is his friend and relative. The two did not have any altercation or quarrel before the incident. Neither could the court fully believe the defense version that the gun could just explode or go off on its own. It thought that when Pulmones was showing the gun to petitioner, he somehow put his finger on the trigger so that when petitioner hit or touched the gun, private respondent accidentally pressed the trigger. The trial court said:

The Court could not believe the statement of Domingo Pulmones that he was holding the gun with an open palm when he showed it to Vicente Palu-ay, because it would be impossible to hold a gun with an open palm. The Court is more inclined to believe that he was holding the gun with his finger on the trigger, when he showed it to Vicente Palu-ay, even if he did not intend to shoot the latter. Domingo Pulmones failed to take the precautionary measure as is called upon from a person of sufficient discretion, of a pointing the barrel of the gun upwards, or away from Vicente Palu-ay, when he showed it to the latter. This Court has observed the person of Domingo Pulmones, during his testimony, he appeared to be intelligent, and in fact, he stated that he was an employee of an electric cooperative before the incident in question happened. He was expected to have exercised the necessary care and diligence in the handling of a firearm. In other words, Domingo Pulmones was recklessly imprudent in handling the super .38 caliber pistol which he retrieved from the back waist of Efren Lauron.[7]

Thus, the trial court gave its opinion as to what it believed had transpired.

Within the issues made out by the parties, a court can find what it thinks happened. A judge is free to decide on the basis of probability. He can make his assessment of the truthfulness of the testimonies aided by his own knowledge and experience.

A decision is void for lack of due process if, as a result, a party is deprived of the opportunity of being heard as

when on the basis of what is presented during a pre-trial alone the court foregoes the holding of a trial and proceeds to render a decision,[8] or when after denying the defense motion to dismiss the criminal prosecution the trial court denies the defense motion to present evidence.[9] Indeed, extrinsic fraud is a ground for the annulment of a judgment because it prevents a party from having a trial or a real contest, or from presenting all of his case to the court.[10] In the case at bar, a hearing was held during which the prosecution and the defense were heard on their evidence. Thereafter, judgment was rendered on the basis of the evidence thus presented. Consequently, any error made by the trial court in the appreciation of the evidence was only an error of judgment but not of jurisdiction so as to render the judgment void.

Indeed, the question raised by the petition for annulment of judgment is a factual question that cannot be reviewed not only because the decision of the trial court is now final but also because a review of such question at the instance of the prosecution would violate the right of the accused against being placed in double jeopardy of punishment for the same act.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Regalado, (Chairman), Melo, Puno, and Martinez, JJ., concur.

[1] Per Justice Segundino Chua, concurred in by Justice Fermin A. Martin, Jr. and Justice Buenaventura J. Guerrero.

[2] 174 SCRA 143 (1989).

[3] Id., at 152-153.

[4] Public Respondent's Comment, p. 8, Rollo, p. 78.

[5] Santiago v. Ceniza, 5 SCRA 494, 496 (1962). Accord, Arcelona v. Court of Appeals, G.R. No. 102900, Oct. 2, 1997. Mercado v. Ubay, 187 SCRA 719 (1990).

[6] Rollo, p. 18.

[7] RTC's decision, pp. 11-12, Rollo, pp. 410-411.

[8] People v. Santiago, 174 SCRA 143 (1989).

[9] Abriol v. Homeres, 84 Phil. 525 (1949).

[10] Makabingkil v. PHHC, 72 SCRA 326 (1976); Anuran v. Aquino, 38 Phil. 29 (1918).

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