

FELIPE NAVARRO, PETITIONER, VS. THE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. No. 121087. August 26, 1999*

Ponente: MENDOZA, J.

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This is a petition for review on certiorari of the decision[1] of the Court of Appeals, dated December 14, 1994, which affirmed the judgment of the Regional Trial Court, Branch 5, Lucena City, dated July 27, 1992, finding petitioner Felipe Navarro guilty beyond reasonable doubt of homicide and sentencing him to ten (10) years of prison mayor, as minimum, and fourteen (14) years, eight (8) months, and one (1) day of reclusion temporal, as maximum, but increased the death indemnity awarded to the heirs of the victim, Enrique "Ike" Lingan, from P30,000.00 to P50,000.00.

The information against petitioner alleged

That on or about the 4th day of February, 1990, in the nighttime, in the City of Lucena, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being then a member of the Lucena Integrated National Police, with intent to kill, did then and there willfully, unlawfully and feloniously assault one Ike Lingan inside the Lucena police headquarters, where authorities are supposed to be engaged in the discharge of their duties, by boxing the said Ike Lingan in the head with the butt of a gun and thereafter when the said victim fell, by banging his head against the concrete pavement, as a consequence of which said Ike Lingan suffered cerebral concussion and shock which directly caused his death.

The evidence shows that, at around 8:40 in the evening of February 4, 1990, Stanley Jalbuena and Enrique "Ike" Lingan, who were reporters of the radio station DWTI in Lucena City, together with one Mario Ilagan, went to the Entertainment City following reports that it was showing nude dancers. After the three had seated themselves at a table and ordered beer, a scantily clad dancer appeared on stage and began to perform a strip act. As she removed her brassieres, Jalbuena brought out his camera and took a picture.[2]

At that point, the floor manager, Dante Liquin, with a security guard, Alex Sioco, approached Jalbuena and demanded to know why he took a picture.[3] Jalbuena replied: "Wala kang pakialam, because this is my job." [4] Sioco pushed Jalbuena towards the table as he warned the latter that he would kill him.[5] When Jalbuena saw that Sioco was about to pull out his gun, he ran out of the joint followed by his companions.[6]

Jalbuena and his companions went to the police station to report the matter. Three of the policemen on duty, including petitioner Navarro, were having drinks in front of the police station, and they asked Jalbuena and his companions to join them. Jalbuena declined and went to the desk officer, Sgt. Añonuevo, to report the incident. In a while, Liquin and Sioco arrived on a motorcycle.[7]

Sioco and Liquin were met by petitioner Navarro who talked with them in a corner for around fifteen minutes.[8] Afterwards, petitioner Navarro turned to Jalbuena and, pushing him to the wall, said to him: "Putang ina, kinakalaban mo si Kabo Liquin, anak yan ni Kabo Liquin, hindi mo ba kilala?" [9] Petitioner Navarro then pulled

out his firearm and cocked it, and, pressing it on the face of Jalbuena, said, "Ano, uutasin na kita?"[10]

At this point, Lingan intervened and said to petitioner Navarro: "Huwag namang ganyan, pumarito kami para magpa-blotter, I am here to mediate."[11] Petitioner Navarro replied: "Walang press, press, mag-sampu pa kayo."[12] He then turned to Sgt. Añonuevo and told him to make of record the behavior of Jalbuena and Lingan.[13]

This angered Lingan, who said: "O, di ilagay mo diyan."[14] Petitioner Navarro retorted: "Talagang ilalagay ko."[15] The two then had a heated exchange.[16] Finally, Lingan said: "Masyado kang abusado, alisin mo yang baril mo at magsuntukan na lang tayo."[17] Petitioner Navarro replied: "Ah, ganoon?"[18]

As Lingan was about to turn away, petitioner Navarro hit him with the handle of his pistol above the left eyebrow. Lingan fell on the floor, blood flowing down his face. He tried to get up, but petitioner Navarro gave him a fist blow on the forehead which floored him.[19]

Petitioner Navarro turned to Jalbuena and said: "Kita mo yan ha, buhay kang testigo, si Ike Lingan ang naghamon."[20] He said to Sgt. Añonuevo: "Ilagay mo diyan sa blotter, sa harap ni Alex Sioco at Dante Liquin, na si Ike Lingan ang naghamon."[21] He then poked his gun at the right temple of Jalbuena and made him sign his name on the blotter.[22] Jalbuena could not affix his signature. His right hand was trembling and he simply wrote his name in print.[23]

Capt. Coronado, the station commander, called petitioner Navarro to his office, while a policeman took Lingan to the Quezon Memorial Hospital. The station manager of DWTI, Boy Casañada, arrived and, learning that Lingan had been taken to the hospital, proceeded there. But Lingan died from his injuries.[24]

Unknown to petitioner Navarro, Jalbuena was able to record on tape the exchange between petitioner and the deceased.[25] The following is an excerpt from the tape recording:

Lingan: Pare, you are abusing yourself.

Navarro: Who is that abusing?

Lingan: I'm here to mediate. Do not include me in the problem. I'm out of the problem.

....

Navarro: Wala sa akin yan. Ang kaso lang . . .

Lingan:

Kalaban mo ang media, pare. Ako at si Stanley, dalawa kami. Okay. Do not fight with me. I just came here to ayusin things. Do not say bad things against me. I'm the number one loko sa media. I'm the best media man. . .

.

Navarro: Huwag tayong mag-lokohan sa ganyan! Huwag na tayong mag-takotan! Huwag mong sabihing loko ka!

Lingan: I'm brave also.

Navarro: Ay lalo na ako. Tahimik lang naman ako. Wala ka namang masasabi sa akin dahil nag-tatrabaho lang ako ng ayon sa serbisyo ko.

Lingan: You are challenging me and him. . . .

Navarro:

Ay walastik ka naman Ike! Pag may problema ka dito sinasabihan kita na may balita tayong maganda. Pambihira ka Ike. Huwag mong sabihin na . . . Parang minomonopoly mo eh.

Lingan: Pati ako kalaban ninyo.

Navarro: Talagang kalaban namin ang press. Lahat, hindi lang ikaw!

Lingan: You are wrong. Bakit kalaban nyo ang press?

Navarro: Pulis ito! Aba!

Lingan: Alisin mo ang baril mo! Alisin mo ang baril mo! Suntukan tayo, sige.

Navarro: Mayabang ka ah!

(Sounds of a scuffle)

Navarro:

Hinamon ako nyan! Pare hinamon ako nyan! Pare hinamon ako nyan, testigo kayo. Alisin ko daw ang baril ko. Hinamon ako nyan. Pare, ilagay mo diyan, hinamon ako sa harap ni Stanley. Testigo kayo, hinamon ako. Pulis tayo eh. Puta, buti nga, suntok lang ang inabot nyan. Sa harap ni Alex, ni Joe, ni Stanley, hinamon ako. Pare, hinamon ako, kinig nyo ha. Hinamon ako nyan. Sige, dalhin nyo sa hospital yan.

Petitioner Felipe Navarro claims that it was the deceased who tried to hit him twice, but he (petitioner) was able to duck both times, and that Ligan was so drunk he fell on the floor twice, each time hitting his head on the concrete.[26]

In giving credence to the evidence for the prosecution, the trial court stated:

After a thorough and in-depth evaluation of the evidence adduced by the prosecution and the defense, this court finds that the evidence for the prosecution is the more credible, concrete and sufficient to create that moral certainty in the mind of the court that accused herein is criminally responsible.

The defense's evidence which consists of outright denial could not under the circumstance overturn the strength of the prosecution's evidence.

This court finds that the prosecution witnesses, more particularly Stanley Jalbuena, lacked any motive to make false accusation, distort the truth, testify falsehood or cause accusation of one who had neither brought him harm or injury.

Going over the evidence on record, the postmortem report issued by Dra. Eva Yamamoto confirms the detailed account given by Stanley Jalbuena on how Ligan sustained head injuries.

Said post-mortem report together with the testimony of Jalbuena sufficiently belie the claim of the defense that the head injuries of deceased Ligan were caused by the latter's falling down on the concrete pavement head first.

The Court of Appeals affirmed:

We are far from being convinced by appellant's aforesaid disquisition. We have carefully evaluated the conflicting versions of the incident as presented by both parties, and we find the trial court's factual conclusions to have better and stronger evidentiary support.

In the first place, the mere fact that Jalbuena was himself a victim of appellant's aggression does not impair the probative worth of his positive and logical account of the incident in question. In fact, far from proving his innocence, appellant's unwarranted assault upon Jalbuena, which the defense has virtually admitted, clearly betrays his violent character or disposition and his capacity to harm others. Apparently, the same motivation that led him into assailing Jalbuena must have provoked him into also attacking Ligan who had interceded for Jalbuena and humiliated him and further challenged him to a fist fight.

. . . .

On the other hand, appellant's explanation as to how Ligan was injured is too tenuous and illogical to be accepted. It is in fact contradicted by the number, nature and location of Ligan's injuries as shown in the post-mortem report (Exh. D). According to the defense, Ligan fell two times when he was outbalanced in the course of boxing the appellant. And yet, Ligan suffered lacerated wounds in his left forehead, left eyebrow, between his left and right eyebrows, and contusion in the right temporal region of the head (Exh. E). Certainly, these injuries could not have resulted from Ligan's accidental fall.

Hence, this appeal. Petitioner Navarro contends:

THE HONORABLE COURT OF APPEALS HAS DECIDED THE CASE NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT. ITS CONCLUSION IS A FINDING BASED ON SPECULATION, SURMISE OR CONJECTURE; THE INFERENCE IT MADE IS MANIFESTLY MISTAKEN, ABSURD OR IMPOSSIBLE; IT COMMITTED GRAVE ABUSE OF DISCRETION; ITS JUDGMENT IS BASED ON A MISAPPREHENSION OF FACTS; ITS FINDING IS CONTRADICTED BY EVIDENCE ON RECORD; AND ITS FINDING IS DEVOID OF SUPPORT IN THE RECORD.

The appeal is without merit.

First. Petitioner Navarro questions the credibility of the testimony of Jalbuena on the ground that he was a biased witness, having a grudge against him. The testimony of a witness who has an interest in the conviction of the accused is not, for this reason alone, unreliable.[27] Trial courts, which have the opportunity to observe the facial expressions, gestures, and tones of voice of a witness while testifying, are competent to determine whether his or her testimony should be given credence.[28] In the instant case, petitioner Navarro has not shown that the trial court erred in according weight to the testimony of Jalbuena.

Indeed, Jalbuena's testimony is confirmed by the voice recording he had made. It may be asked whether the tape is admissible in view of R.A. No. 4200, which prohibits wire tapping. The answer is in the affirmative. The law provides:

SECTION 1. It shall be unlawful for any person, not being authorized by all the parties to any private communication or spoken word, to tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or detectaphone or walkie-talkie or tape-recorder, or however otherwise described:

It shall also be unlawful for any person, be he a participant or not in the act or acts penalized in the next preceding sentence, to knowingly possess any tape record, wire record, disc record, or any other such record, or copies thereof, of any communication or spoken word secured either before or after the effective date of this Act in the manner prohibited by this law; or to replay the same for any other person or persons; or to communicate the contents thereof, either verbally or in writing, or to furnish transcriptions thereof, whether complete or partial, to any other person: Provided, That the use of such record or any copies thereof as evidence in any civil, criminal investigation or trial of offenses mentioned in section 3 hereof, shall not be covered by this prohibition.

....

SEC. 4. Any communication or spoken word, or the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or any information therein contained obtained or secured by any person in violation of the preceding sections of this Act shall not be admissible in evidence in any judicial, quasi-judicial, legislative or administrative hearing or investigation.

Thus, the law prohibits the overhearing, intercepting, or recording of private communications.[29] Since the exchange between petitioner Navarro and Lingan was not private, its tape recording is not prohibited.

Nor is there any question that it was duly authenticated. A voice recording is authenticated by the testimony of a witness (1) that he personally recorded the conversation; (2) that the tape played in court was the one he recorded; and (3) that the voices on the tape are those of the persons such are claimed to belong.[30] In the instant case, Jalbuena testified that he personally made the voice recording;[31] that the tape played in court was the one he recorded;[32] and that the speakers on the tape were petitioner Navarro and Lingan.[33] A sufficient foundation was thus laid for the authentication of the tape presented by the prosecution.

Second. The voice recording made by Jalbuena established: (1) that there was a heated exchange between petitioner Navarro and Lingan on the placing in the police blotter of an entry against him and Jalbuena; and (2) that some form of violence occurred involving petitioner Navarro and Lingan, with the latter getting the worst of it.

Furthermore, Dr. Eva Yamamoto, who performed the autopsy on the body of Lingan, issued a medical certificate,[34] dated February 5, 1990, containing the following findings:

Post Mortem Findings:

- = Dried blood, forehead & face
- = No blood oozed from the ears, nose & mouth
- = Swelling, 3 cm x 2 cm, temporal region, head, right
- = Lacerated wound, 2 cm in length, 1-2 in depth, lateral, eyebrow, Left
- = Lacerated wound, 0.5 cm in length, superficial, between the left & right eyebrow
- = Lacerated wound, 2 cm in length, 1 cm in depth, forehead, Left
- = Cyanosis of the tips of fingers & toes

CAUSE OF DEATH:

- = CEREBRAL CONCUSSION & SHOCK
- = BLOW ON THE HEAD

Dr. Yamamoto testified:

Q Give your opinion as to what was the possible cause of this findings number one, which is oozing of blood from the forehead?

A It may be due to a blow on the forehead or it bumped to a hard object, sir.

Q Could a metal like a butt of a gun have caused this wound No. 1?

A It is possible, sir.

Q And in the alternative, could have it been caused by bumping on a concrete floor?

A Possible, sir.

FISCAL:

What could have been the cause of the contusion and swelling under your findings No. 2 doctor?

WITNESS:

It may be caused by bumping to a hard object, sir.

Q Could a butt of a gun have caused it doctor?

A The swelling is big so it could have not been caused by a butt of a gun because the butt of a gun is small, sir.

Q How about this findings No. 4?

A By a bump or contact of the body to a hard object, sir.

Q And findings No. 5 what could have caused it?

A Same cause, sir.

Q This findings No. 6 what could have caused this wound?

A Same thing, sir.

Q How about this last finding, cyanosis of tips of fingers and toes, what could have caused it doctor?

WITNESS:

It indicates there was cardiac failure, sir.

FISCAL:

In this same post mortem report and under the heading cause of death it states: Cause of Death: Cerebral concussion and Shock, will you explain it?

A Cerebral concussion means in Tagalog "naalog ang utak" or jarring of the brain, sir.

Q What could have been the cause of jarring of the brain?

A It could have been caused by a blow of a hard object, sir.

Q What about the shock, what could have caused it?

A It was due to peripheral circulatory failure, sir.

Q

Could any one of both caused the death of the victim?

A Yes, sir.

Q Could cerebral concussion alone have caused the death of the deceased?

A May be, sir.

Q How about shock?

A

Yes, sir.

FISCAL:

Which of these two more likely to cause death?

WITNESS:

Shock, sir.

Q

Please explain further the meaning of the medical term shock?

A

It is caused by peripheral circulatory failure as I have said earlier, sir.

....

FISCAL:

Could a bumping or pushing of one's head against a concrete floor have caused shock?

WITNESS:

Possible, sir.

How about striking with a butt of a gun, could it cause shock?

A Possible, sir.[35]

The above testimony clearly supports the claim of Jalbuena that petitioner Navarro hit Lingan with the handle of his pistol above the left eyebrow and struck him on the forehead with his fist.

Third. It is argued that the mitigating circumstance of sufficient provocation or threat on the part of the offended party immediately preceding the act should have been appreciated in favor of petitioner Navarro. Provocation is defined to be any unjust or improper conduct or act of the offended party, capable of exciting, inciting, or irritating anyone.[36] The provocation must be sufficient and should immediately precede the act.[37] *People v. Paga*, 79 SCRA 570 (1977).³⁷ To be sufficient, it must be adequate to excite a person to commit the wrong, which must accordingly be proportionate in gravity.[38] And it must immediately precede the act so much so that there is no interval between the provocation by the offended party and the commission of the crime by the accused.[39]

In the present case, the remarks of Lingan, which immediately preceded the act of petitioner, constituted sufficient provocation. In *People v. Macaso*,^[40] we appreciated this mitigating circumstance in favor of the accused, a policeman, who shot a motorist after the latter had repeatedly taunted him with defiant words. Hence, this mitigating circumstance should be considered in favor of petitioner Navarro.

Furthermore, the mitigating circumstance that the offender had no intention to commit so grave a wrong as that committed should also be appreciated in favor of petitioner. The frantic exclamations of petitioner Navarro after the scuffle that it was Lingan who provoked him shows that he had no intent to kill the latter. Thus, this mitigating circumstance should be taken into account in determining the penalty that should be imposed on petitioner Navarro. The allowance of this mitigating circumstance is consistent with the rule that criminal liability shall be incurred by any person committing a felony although the wrongful act done be different from that which he intended.^[41] In *People v. Castro*,^[42] the mitigating circumstance of lack of intent to commit so grave a wrong as that committed was appreciated in favor of the accused while finding him guilty of homicide.

However, the aggravating circumstance of commission of a crime in a place where the public authorities are engaged in the discharge of their duties should be appreciated against petitioner Navarro. The offense in this case was committed right in the police station where policemen were discharging their public functions.^[43]

The crime committed as found by the trial court and the Court of Appeals was homicide, for which the penalty under Art. 249 of the Revised Penal Code is reclusion temporal. As there were two mitigating circumstances and one aggravating circumstance, the penalty should be fixed in its minimum period.^[44] Applying the Indeterminate Sentence Law, petitioner Navarro should be sentenced to an indeterminate penalty, the minimum of which is within the range of the penalty next lower in degree, i.e., prision mayor, and the maximum of which is reclusion temporal in its minimum period.^[45]

The indemnity as increased by the Court of Appeals from P30,000.00 to P50,000.00 is in accordance with current jurisprudence.[46]

WHEREFORE, the decision of the Court of Appeals is AFFIRMED with the modification that petitioner Felipe Navarro is hereby SENTENCED to suffer a prison term of 8 years of prision mayor, as minimum, to 14 years and 8 months of reclusion temporal, as maximum.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, and Buena, JJ., concur.

[1] Per Justice Godardo A. Jacinto and concurred in by Justices Ricardo J. Francisco and Ramon A. Barcelona.

[2] TSN pp. 4-8, May 28, 1990.

[3] Id., pp. 9-10.

[4] Id., p. 10.

[5] Id., pp. 10-11.

[6] Id., p. 11.

[7] Id., pp. 11-14.

[8] Id., p. 15.

[9] Id., pp. 16-17.

[10] Id., p. 20.

[11] Id., p. 23.

[12] Ibid.

[13] Id., p. 24.

[14] Ibid.

[15] Id., p. 25.

[16] Ibid.

[17] Id., p. 26.

[18] Ibid.

[19] Id., pp. 26-32.

[20] Id., p. 32.

[21] Id., p. 34.

[22] Id., pp. 34-35.

[23] Id., pp. 35-37.

[24] Id., pp. 45-53.

[25] TSN, pp. 8-11, June 26, 1990.

[26] TSN, pp. 5-6, Sept. 16, 1991.

[27] See *People v. Mandal*, 188 SCRA 526 (1990).

[28] *People v. Padilla*, G.R. No. 126124, January 20, 1999.

[29] *Ramirez v. Court of Appeals*, 248 SCRA 590 (1995).

[30] *United States v. Jones*, 730 F. 2d. 593 (1984).

[31] TSN, pp. 8-22.

[32] *Id.*, pp. 11-13.

[33] *Id.*, p. 11

[34] Records, p. 56.

[35] TSN, pp. 7-11, Aug. 23, 1990.

[36] *Pepito v. Court of Appeals*, G.R. No. 119942, July 8, 1999.

[37] *People v. Paga*, 79 SCRA 570 (1977).

[38] *People v. Nabora*, 73 Phil. 434 (1941).

[39] *Supra*, note 35.

[40] 64 SCRA 659 (1975).

[41] REVISED PENAL CODE, Art. 4.

[42] 117 SCRA 1014 (1982).

[43] *People v. Regala*, 113 SCRA 613 (1982).

[44] REVISED PENAL CODE, Art. 64.

[45] Act No. 4103, §1.

[46] E.g., *Pepito v. Court of Appeals*, G.R. No. 119942, July 8, 1999.

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