

AURELIO SUMALPONG, PETITIONER, VS. COURT OF APPEALS, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 123404. February 26, 1997

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

The petitioner AURELIO SUMALPONG was charged with the crime of attempted homicide allegedly committed as follows:

"That on or about August 6, 1982, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a .38 caliber revolver and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shot (sic) one Arsolo Ramos, thus the said accused having commenced the commission of Homicide directly by overt acts and did not perform all acts of execution which should have produced the felony by reason of some cause or accident other than his own spontaneous desistance." [1]

After the petitioner pleaded not guilty on arraignment, trial on the merits followed. The prosecution presented the complainant Arsolo Ramos, and his wife, Leonarda who both testified to the following facts: At around 10:00 o'clock in the evening of August 6, 1992, while complainant and his wife were on their way home from their ricefield in the interior, they saw the petitioner standing by the road beside a house under construction. When they came near him, the petitioner inquired from Leonarda if she knew the identity of the persons who had stoned his house, and when the latter denied any knowledge thereof, the petitioner told her that the people from the interior were abusive. To that comment Leonarda retorted that the petitioner should first identify the persons responsible for stoning his house, otherwise, she will bring the matter to the attention of the Barangay Captain. [2] Angered by Leonarda's reply, the petitioner asked, "why are you angry, are you the wife of that person"? [3], and simultaneously slapped Leonarda's face causing the latter to fall to the ground. While Leonarda was on her hands and knees, the petitioner drew his gun and shot her at the back of her head. The complainant then rushed towards the petitioner who shot him twice but missed. The petitioner and the complainant grappled for the possession of the gun and fell into a nearby canal. In the course of the struggle, the petitioner bit the complainant's right forearm and left ear thereby causing a mutilation of the latter. [4]

The foregoing was corroborated by another witness for the prosecution, Francisco Manugas, who happened to be in a nearby waiting shed when the incident occurred. Manugas testified that he was resting and talking to one Alberto Vilasan in the waiting shed when he saw the petitioner station himself by an electric post while the complainant and Leonarda were nearing the vicinity of the latter. According to Manugas, the petitioner approached Leonarda and shortly thereafter, he saw the former slap the latter's left cheek causing her to stagger. Manugas then saw the petitioner shoot Leonarda prompting the complainant to rush to her aid. The petitioner aimed his gun at the complainant and fired twice but missed. A scuffle between the petitioner and the complainant ensued, and it was at this juncture that Manugas and Vilasan approached Leonarda who was then lying on the ground. Their efforts to help Leonarda were thwarted by two unknown persons, both armed with guns, who

appeared from the dark and ordered them not to move. Threatened, Manugas and Vilasan retreated and ran away. They went to the Barangay Captain to report the incident to him, and the latter immediately responded by going to the scene of the crime.[5]

On the other hand, the defense would have us believe that it was the complainant who had a gun which he intended to use against the petitioner after the latter's heated altercation with Leonarda. The defense's version of the incident relied heavily on the testimony of the petitioner, the substance of which was succinctly summarized in the trial court's decision as follows:

"According to him (petitioner), on August 6, 1992, at around 6:00 P.M. he went to the upper part of the place where his house is located to inquire from the four housing contractors who were in the carport of a vacant housing unit if they have any knowledge of the identity of the persons who stoned his house and was informed that some drunken youths from the interior would pass by and throw stones. He then noticed a couple approaching from a distance and one of the contractors called the couple, whom he identified as the complainant and his wife, and the two approached them. He then asked the complainant if he knows the youths throwing stones at his house but was told by the complainant that he does not. He then asked the complainant that if he knows these youths to advise them not to throw stones. However, he was told that he could not catch these youths in the act of throwing stones as they would be in the upper level of the place. He then retorted that 'perhaps you know these people by the way you talk' and the wife of the complainant intervened saying 'you better identify these people before you make any accusation or I'll go to the barangay captain.' Their discussion became heated and the four contractors went inside the house. He was then threatened by the complainant to leave, otherwise something would happen to him with the complainant further telling him that he has a gun inside his bag and he is not afraid since he even had a fight a month before. He did not leave and their discussion continued and the complainant then got a gun inside his bag. The accused then took hold of the hand of Leonarda Ramos and using her as a shield brought her to the road. The complainant followed and grabbed his wife and the accused then grabbed the hand of the complainant holding the gun and the gun fired. He pushed the wife aside and they grappled with each other with his right hand holding the right hand of the complainant holding the gun and with his left arm encircling the neck of the complainant. He was bitten by the complainant on the left arm and he also bit the left ear and the right forearm of the complainant. While they were grappling with each other, the gun fired four times and when they fell with the complainant underneath him, he noticed someone whom he came to know as the wife of the complainant kicking him on the head several times. Later, someone whom he identified as Rogelio Omiter separated them and brought him home. x x x"[6]

In an attempt to lend some degree of persuasiveness to the petitioner's story, Rogelio Omiter was presented as a witness for the defense. Rogelio testified that on the said date and time of the incident, he was at his house when he heard a discussion taking place some ten meters away. He listened to the conversation and was able to identify one of the voices as that of the petitioner's. Suddenly, he heard a gunshot which propelled him to run towards the place where the voices were coming from. While running, he again heard successive gunshots. From a distance he could see the petitioner and the complainant wrestling with each other. He then approached and tried to separate the two from each other's hold, and while doing so, he observed that Leonarda was repeatedly kicking the petitioner's head.[7]

According full faith and credence to the testimonies of the prosecution witnesses, the trial court rendered a decision convicting the petitioner of the crime of attempted homicide and sentenced him to suffer the penalty of imprisonment from six (6) months and one (1) day of arresto mayor as minimum to two (2) years, four (4) months and one (1) day of prision correccional as maximum. The petitioner was likewise ordered to indemnify the complainant in the amount of: (a) P16,800.00 for the loss of his crops due to his failure to attend to his farmwork

because of the injuries inflicted upon him by the petitioner; (b) P2,000.00 for hospitalization expenses; and (c) P5,000.00 by way of moral damages.[8] The petitioner's conviction was affirmed on appeal to the Court of Appeals which, however, modified the award of damages to the complainant, deleting the awards for loss of crops and hospitalization expenses, increasing the moral damages to P10,000.00, and awarding nominal damages in the same amount.

Before this Court is the petitioner's appeal where he endeavors to weaken the complainant's credibility by pointing out an alleged inconsistency between the latter's sworn statement and his testimony in open court. The petitioner contends that a material discrepancy exists between the complainant's sworn statement that the petitioner fired at him first before shooting Leonarda, and his oral testimony that the petitioner shot his wife, Leonarda, before firing at him twice.

Time and again this Court has held that inconsistencies in the testimony of witnesses when referring only to minor details and collateral matters do not affect either the substance of their declaration, their veracity, or the weight of their testimony. Such inconsistencies reinforce rather than weaken their credibility and suggest that they are telling the truth.[9] The aforesaid rule finds application to the case at bench for the matter of who was shot first by the petitioner is clearly insignificant and does not change the established fact that the petitioner had indeed fired at both the complainant and the latter's wife. Although there may be inconsistencies on minor details, the same do not impair the credibility of the witness where there is consistency in relating the principal occurrence and positive identification of the assailant.[10]

Furthermore, a contradiction between a witness' affidavit and his testimony in open court may almost always be explained by the fact that being taken ex parte, an affidavit is often incomplete and inaccurate, sometimes from partial suggestions, and sometimes from the want of suggestions and inquiries. An affidavit is not a complete reproduction of what the declarant has in mind because it is generally prepared by the administering officer and the affiant simply signs it after it has been read to him.[11] The same is especially true when after having prepared the affidavit, the administering officer falls to translate the statements contained therein in the vernacular for the full comprehension of the affiant who is not well versed in the English language. On this point, the Court of Appeals noted that the complainant's sworn statement which was written in English was never translated or interpreted to the complainant in the Visayan dialect, the language known and spoken by him, before the latter affixed his signature thereto.[12] This is, manifest from the following testimony of the complainant:

Q

And this sworn statement is written in the English language and this was translated to you prior to your signature?

A

This was not translated to me in Visayan dialect.

Q

Where did you sign this sworn statement?

A

At the police headquarters, sir.

Q

In other words, this sworn statement was made in the police headquarters and the investigating officer were (sic) asking you questions at that time?

A

Yes, sir.

Q

And your answers were translated or typewritten by that investigating officer?

A

Yes, sir.

Q

How was the questioning done, was it in the Visayan dialect (or) in English language?

A

Visayan dialect, sir.

Q

And after the questioning by the police officer, you were asked to sign your name at the bottom portion of this statement?

A

Yes, sir."[13]

In any event, the complainant's open court declaration that the petitioner shot Leonarda prior to shooting him should already be deemed a clarification or a rectification of the contradictory statement in his affidavit. During cross-examination, the complainant unhesitatingly clarified the correct sequence of events:

Q

In your testimony, Mr. Ramos, you said the accused first shot your wife and later shot you for (sic) two times?

A

Yes, sir.

Q

Is it not the reverse that you were first shot by the accused and later your wife was shot by said accused?

A

First my wife was shot, then later on I was the one.

Q

Are you sure of that, Mr. Ramos?

A

Yes, sir.

Q

And you would not change your answer whatsoever?

A

No, sir.

Q

I am again confronting (sic) your statement you have given in the police station and I would like to quote question No. 9 of this statement of yours. I quote: 'What happened after then (sic)?' Answer: He pinpointed me to be the person who stoned his house, at that juncture a heated argument ensued and immediately took his handgun and shot me for (sic) two times, but luckily I was not hit.' Is that not a fact that this was your (sic) statement you have given in the police station?

A

What I can say is my wife was the one first shot and then I was the one shot later on.

Q

But in this sworn statement of yours, it appears that your wife was the (sic) first shot-that you were shot first and then your wife?

A

What I said is that my wife was first shot and later on I was shot." [14]

As the issue raised ultimately boils down to a question of credibility, it bears reiterating that findings and conclusions of the trial court on the credibility of witnesses enjoy a badge of respect for the reason that trial courts have the advantage of observing the demeanor of witnesses as they testify.[15] Entitled to great weight and respect, therefore, is the following observation of the trial court:

"x x x The complainant and his wife are simple farmers and could not be prone to violence as insinuated by the accused. Their demeanor and appearance impressed the court as people dedicated more to their livelihood, as shown by the fact that they had to go home as late as 10:00 P.M. in working their farm. Their meekness and docility is shown, if accused's version is to be believed, by the fact that when allegedly called, they readily approached. x x x

"On the other hand, from the evidence presented, the court finds the accused (herein petitioner) to be hot tempered, prone to sudden anger and impulsiveness which lead (sic) to his shooting the couple even on a trifling matter. It was apparent that the accused that evening was very angry and ready for trouble. He was looking for persons who had thrown stones at his house x x x" [16]

In view of the foregoing, this Court cannot but concur with the trial court and the Court of Appeals in finding the petitioner guilty beyond reasonable doubt of the crime charged. Anent the award of damages, however, this Court upholds the Court of Appeals' ruling on the matter. Eliminating the award of actual or compensatory damages in the form of hospitalization expenses and loss of income, the Court of Appeals cited the failure of the complainant to offer any proof of the same. To justify a grant of actual or compensatory damages, it is necessary to prove with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable by the injured party, the actual amount of loss.[17]

The petitioner belabors the increase in the amount of moral damages to P10,000.00 and the award of nominal

damages in an equivalent amount when the complainant did not appeal the decision of the trial court to the Court of Appeals. This contention deserves scant consideration. An appeal in a criminal case opens the whole case for review and this includes the review of the penalty, indemnity and damages.[18] Squarely applicable to the instant case is this Court's pronouncement in *Quemel vs. Court of Appeals*,[19] that,

"[a]lthough the authority to assess damages or indemnity in criminal cases is vested in trial courts, it is only in the first instance. On appeal, such authority passes to the appellate court. Thus, this Court has, in many cases, increased the damages awarded by the trial court, although the offended party had not appealed from said award, and the only party who sought a review of the decision of said court was the accused." [20]

The Court finds the award of nominal and moral damages both in the amount of P10,000.00 justified under the circumstances. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.[21] In other words, whenever there has been a violation of an ascertained legal right, although no actual damages resulted or none are shown, the award of nominal damages is proper.[22] There is no room to doubt that some species of injury was caused to the complainant because of the medical expenses he incurred in having his wounds treated, and the loss of income due to his failure to work during his hospitalization. However, in the absence of competent proof of the amount of actual damages, the complainant is entitled only to nominal damages.[23]

Anent the increase in the amount of moral damages suffice it to state that the nature of the injuries and the degree of physical suffering endured by the complainant warrants the same. The tragic incident caused a mutilation of complainant's left ear and a permanent scar on his right forearm. These injuries have left indelible marks on the complainant's body and will serve as a constant reminder of this traumatic experience.

WHEREFORE, the assailed decision of the Court of Appeals is hereby AFFIRMED in toto.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] DECISION in Criminal Case No. 4130 dated November 16, 1992; p. 1; Rollo p. 19.

[2] *Ibid.*, p. 2; Rollo, p. 20.

[3] DECISION in CA-G.R. CR No. 14136, p. 2; Rollo, p. 29.

[4] *Supra*.

[5] *Supra*, p. 3; Rollo, p. 30.

[6] *Supra*, pp. 4-5; Rollo, pp. 22-23.

[7] *Supra*, pp. 4-5; Rollo, pp. 31-32.

[8] *Supra*, p. 9; Rollo, p. 27.

[9] *People vs. Porras, et al.*, G.R. No. 114263-64, March 29, 1996; *People vs. Escandor*, G.R. No. 95049, December 9, 1996; *People vs. Laray, et al.*, G.R. No. 101809, February 20, 1996; *People vs. Gondora*, G.R. No. 118770, December 6, 1996.

[10] *People vs. Panganiban*, 241 SCRA 91 [1995].

[11] People vs. Gondora, supra; People vs. Fulinara, 247 SCRA 28 [1995].

[12] Supra, p. 7; Rollo, p. 34.

[13] TSN, Arsolo Ramos, October 15, 1992, pp. 13-14.

[14] Ibid, pp. 14-15.

[15] People vs. Gamiao, 240 SCRA 254 [1995]; People vs. Nuestro, 240 SCRA 221 [1995]; People vs. De Roxas, 241 SCRA 369 [1995].

[16] Supra, p. 6; Rollo, p. 24.

[17] People vs. Rosario, et al., 246 SCRA 658, 671 [1995]; Del Mundo vs. Court of Appeals, et al., 240 SCRA 348, 356 [1995]; Sulpicio Lines, Inc. vs. Court of Appeals, 246 SCRA 376 [1995].

[18] People vs. Godines, et al., 196 SCRA 765, 773 [1991]; People vs. Villagracia, et al., 226 SCRA 374, 381 [1993].

[19] 22 SCRA 44.

[20] Ibid, pp. 46-47.

[21] Article 2221 of the Civil Code.

[22] Torts and Damages by Vicente J. Francisco [1954], p. 388 citing 15 Am. Jur., Sec. 6, p. 392.

[23] Lufthansa German Airlines vs. Court of Appeals, 243 SCRA 600, 616 [1995]; Alitalia vs. IAC, 192 SCRA 9 [1990].

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