

SALVADOR ANDALIS Y MORALLO, PETITIONER, VS. COURT OF APPEALS, REGIONAL TRIAL COURT OF CAMARINES SUR, BRANCH XXXV, AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 133813. August 11, 2004

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TINGA, J.:

Before this Court is a Petition for Review[1] on Certiorari filed by Salvador Andalis (Andalis) seeking to set aside the Decision[2] of the Court of Appeals in CA-G.R. CR No. 19550, and its Resolution[3] of April 17, 1998 denying his Motion for Reconsideration.[4] The assailed Decision affirmed Andalis' conviction for the crime of Homicide by the Regional Trial Court, Branch 35, Iriga City, in Criminal Case No. IR-3322.

The antecedents[5] follow:

It was Christmas Day, December 25, 1992. In San Agustin, Iriga City, one Pio Gonowon, 29, single, was stabbed to death by one Salvador M. Andalis, 29, married, both residents of the same barangay.

The prosecution claims that Pio Gonowon was killed by Andalis as an aftermath of a heated discussion during a drinking session, while the defense contends that Gonowon was stabbed by Andalis as an act of defense of the honor of the latter's wife.

As to which of the two (2) versions is worthy of credence is tasked upon the Court to decide.

The charge against the accused is copied verbatim hereunder:

INFORMATION

The undersigned Assistant City Prosecutor of Iriga City, hereby accuses one SALVADOR ANDALIS y MORALLO of San Agustin, Iriga City of the crime of HOMICIDE, defined and penalized under Art. 249 of the Revised Penal Code, committed as follows:

That on or about 3:00 o'clock in the afternoon of December 25, 1992, in San Agustin, Iriga City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a fan knife, with intent to kill, did, then and there, willfully, unlawfully and feloniously attack, assault and stab one PIO GONOWON, with said weapon, thereby inflicting upon said Pio Gonowon wounds on his back which wounds directly caused the instant death of the latter, to the damage and prejudice of the heirs of the said Pio Gonowon in such amount as may be proven in court.

CONTRARY TO LAW.

Iriga City, Philippines, March 18, 1993.

(S/T) JOSE M. TAGUM

PROSECUTOR II

The prosecution presented the following witnesses:

1) Alex Embestro, (25), single, who declared, among others, that on said date and at about 9:00 o'clock A.M., he, Pio Gonowon, Freddie Abonite, Ronnie Biag, Joel Laniog and Amado Nocos were engaged in a drinking session at the yard of Ulysses Salvadora at San Agustin, Iriga City; that at noontime, accused Salvador Andalis joined them; the drinking session lasted up to 3:00 o'clock in the afternoon, when Salvador Andalis and Pio Gonowon were telling stories of their past activities; that Andalis being irritated, said to Gonowon, "Baga na aco pigpaparatesting mo" (As if you are trying to test me); Gonowon replied: "Di ako migo lumalaban kanimo ta di kita magkatalo" (I will not fight you friend as we are not enemies). This witness upon hearing that the exchange of words between the two (Pio and Salvador) was getting heated persuaded Pio to go home, stood up expecting Pio to follow towards the road. Pio also stood up but was hit at his back with a chair by the accused. Pio ran away then but was chased by the accused and upon catching up, accused stabbed Pio Gonowon at the back with a 'balisong' (fanknife). Pio was still able to run but stumbled and fell on the ground, again accused stabbed him for the second time. Pio stood up and again ran and fell again on the ground and crawling, he was again stabbed at the back for the third time. Pio nevertheless stood up tried to return to the place where the ground drank (sic), but was unable to do so and he fell face down on the concrete slab. Witness identified pictures of the deceased: EXH. "A" depicting a person with no upper shirt but with long pants, face down on a concrete slab, marked as EXH. "A-1"; another picture-EXH. "B" depicting wounds on bloodied back, marked as EXH. "B-1"; a third picture EXH. "C", showing sprawled person with bloodied back as EXH. "C-1" and a fourth picture as EXH. "D" the place where the drinking session took place, depicting benches, a table, chairs with a fallen or tumbled one marked as EXH. "D-1". The tumbled chair was identified by this witness as the one used to strike the deceased. Embestro pointed out in the same picture that the big bowl on the table contained the "polutan", the pitcher with water as "chaser", and that the group by the table was facing the road. He pointed to the long bench on the right of the picture as where he and Pio were seated, the long bench on the left where Ronnie Biag, and Joel Laniog were positioned, and Freddie Abonite on the upright chair, and that accused was seated on the tumbled chair which he used to smash the back of Pio Gonowon.

Significantly, from the questions of the court, this witness said that the drinking session started at around 9:00 o'clock in the morning as a Christmas day celebration and lasted up to 3:00 o'clock in the afternoon; that the drinking party consumed about nineteen (19) round bottles of gin, locally called "marka demonyo", with about 7 persons partaking of the drinks; that it was after one round bottle of gin was consumed that the accused joined them, but Pio was with the group at the very start; that accused left for a while before 1:00 o'clock P.M. to take his mother somewhere but returned and resumed drinking with the group at past 1:00 o'clock that afternoon; and that the drinking session broke up because of the incident at about 3:00 o'clock in the afternoon.

2) Another witness for the prosecution was Justo Retrita, 19, a high school graduate and a resident of San Agustin, Iriga City, who testified that he went to the house of Randy Bona on that Christmas day to get materials for making a "belen" for contest purposes, together with Tirso Gonowon, Rolando Portacio and Randy Bona, at about 3:00 o'clock P.M. They were offered snacks at the house of Randy Bona and while eating outside the house, they saw Pio Gonowon being chased by Salvador Andalis; that Pio stumbled and he was stabbed at the back three times by Salvador Andalis; that Pio got up, ran towards the road until the property of Albano, still being chased. Then upon reaching Albano's property, Pio turned back to the house of Alma Bona and there Pio fell down on a cemented slab.

This witness admitted that Pio's father and his mother are cousins; that he did not know the cause of stabbing, and that he was 10 meters away from where the drinking session was; that he, with his companions, saw upon

arrival there (at house of Randy Bona) Pio Gonowon, Salvador Andalis, Ronnie Biag, Alex Embestro, Freddie Abonite and Joel Laniog in a drinking session; that his attention to the incident was called by the shouting; that from the place where they were eating, it was only 5 meters away from where Pio was finally stabbed by the accused.

3) Dr. Loreto G. Leonido, City Health Officer of Iriga City, testified on her post-mortem findings on the body of the late Pio Gonowon and identified her issued post-mortem certificate marked as Exhibit “E”. In said certificate, it is stated among others, 3 incised wounds at the back, one with 4 inches long by 1 inch deep, another 2 ½ inches long but only skin and subcutaneous tissue deep, superficial, and a third incised wound, 1 inch long and 2 ½ inches deep. These wounds all gaping according to her were caused by a sharp edged instrument, possibly a “balisong” or fan knife. On these wounds, the doctor said that the back of the deceased was towards the assailant; that the contusion of 2 inches long by 1 inch in diameter on the forehead just above left eyebrow could have been caused by a blunt instrument or even a fall on a concrete pavement. That the cause of death: “Internal and external hemorrhages due to incised wounds at the back” (Exh. “E”).

4) The last witness on direct evidence for the prosecution was Felomina Gonowon, (56), mother of deceased victim Pio Gonowon, who testified on the aspect of damages, both actual and compensatory and moral damages and identified receipts in consonance with her claim for the expenses in connection with the death of her son. The documentary evidence she identified are:

Exh. “F”,
\$2,688.00 (\$1 x P20.00 in 1992) or P53,760.00 – air fare of father of deceased;

Exh. “G”, P200.00 for niche

Exh. “G-2”, P350.00 for funeral expenses

Exh. “G-3”, P39,400.00 for funeral service

Exh. “G-4”, P5,000.00 for vault construction

Exh. “H” Receipt – P3,500.00 for pig

Exh. “H-1” Receipt, P410.15 for miscellaneous & snack expenses

Exh. “H-2” Receipt, P681.00 for miscellaneous grocery

Exh. “H-3” Receipt, P1,054.00 for misc. grocery for ingredients for food

Exh. “H-4” Receipt, P378.00 for vegetables

Exh. “H-5”, Receipt P8,300.00 for cow

Exh. “I” Certification of Salary of husband \$1,447.00 or P28,940.00 salary lost of husband for 1/3 month

Exh. “J”, P5,000.00 for partial attorney’s fees

Exh. “J-1” (receipts) P10,000.00 for attorney’s fees.

The evidence for the defense in chief consisted of the testimonies of:

1) Vicente Orlain, 71, a neighbor of the accused who allegedly heard the cry for help of Vivien Andalis, the wife of the accused. He went out of the house to verify that cry for help and saw Pio Gonowon running out of the house of the accused with a bloodied back.

- 2) Vivian Andalis, (26), wife of accused testified that deceased tried to attempt on her honor by embracing, and kissing her and trying to lift her dress and so she cried for help and her husband ran inside their house and stabbed the deceased.
- 3) Flora Andalis Salvadora, (3), sister of the accused who testified that she heard the cry of Vivian for help and saw Pio coming out of the house of the accused and fell dead on the yard.
- 4) SPO1 Ramon Villamor, a policeman of the Iriga City PNP who fetched the accused from his cell at the Pili PNP Station, after receiving a radio message.
- 5) SPO1 Pedro Corporal, a policeman from PNP Pili, Camarines Sur, presented to identify Police Blotter Entry No. 1237 and the excerpt thereof regarding the voluntary surrender of accused.
- 6) Salvador Andalis, 29, married, the accused himself, and a resident of San Agustin, Iriga City. He declared that on December 25, 1992, at about 8:00 A.M. he took his wife and three (3) children by pedicab ("pajak") to his parents-in-law at a distance of 500 meters away in the same barangay to celebrate Christmas day there. At 1:00 P.M. he returned and took his mother to his brother's house by pedicab also. Before doing so, he drank two shots with a group composed of deceased Pio Gonowon, Alex Embestro, Ronnie Biag and Freddie Abonita. He gave 'pulutan' to the group consisting of a bowl of 'paksiw' and another bowl of noodles which he got from his house nearby about 10 meters away. He left to feed the pigs and see his cow, about 500 meters away. When he returned to rejoin the group, he came upon Pio Gonowon, getting wild throwing and breaking things. The others scampered away afraid of Pio Gonowon who was a noted drug addict. He asked Pio why he was acting wild and Pio said it was because he needed more drinks. He procured a round bottle of gin and they drank together. When the bottle was half consumed, he begged leave to urinate at the back of his house. While doing so, he heard the cry for help of his wife and upon entering his house he saw Pio embracing, kissing his wife and her dress being removed by Pio. He stabbed Pio more than once and Pio was able to run out of the house and fell down. He went to the Pili PNP to surrender.

The trial court found the testimonies of Alex Embestro (Embestro) and Justo Retrita (Retrita) plausible, logical and straightforward. According to the court, the testimonies of these two witnesses described in detail the events that transpired before, during and after the stabbing incident. On the other hand, the testimonies for the defense are improbable, fraught with evasive answers and appear to have been coached. The trial court did not give significance to the defense's attempt to prove that Gonowon was a drug addict as no evidence was introduced that the latter was under the influence of drugs at the time of the incident.[6]

Pertinently, the trial court held that the burden to prove that he acted upon the justifying circumstance of defense of spouse fell on Andalis because of his admission that he killed Gonowon. The RTC found that Andalis failed to discharge this burden as there was no showing of unlawful aggression on Gonowon's part. The trial court noted that Gonowon was very drunk and would have surely fallen down if he was so much as pushed.[7]

Accordingly, the trial court rendered judgment, with the following fallo:

WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused Salvador Andalis y Morallo beyond reasonable doubt for having committed the crime of Homicide, with the mitigating circumstance of voluntary surrender, and applying the Indeterminate Sentence Law, said accused is hereby sentenced to suffer imprisonment of EIGHT (8) years of Prision Mayor as minimum to TWELVE (12) years and one (1) day of Reclusion Temporal as maximum; to pay the heirs of deceased Pio Gonowon the amounts of P50,000.00 as death indemnity, P142,023.00 actual and compensatory damages, P15,000.00 as reimbursement of attorney's fees and P50,000.00 as moral damages.

Cost de oficio.[8]

Not satisfied with the decision of the RTC, Andalis elevated his case to the Court of Appeals on the grounds that Embestro and Retrita are biased witnesses; that the justifying circumstance of defense of spouse was not considered; and that he was erroneously convicted of homicide.

As mentioned at the outset, the appellate court affirmed the trial court's decision finding that Andalis failed to prove the existence of the justifying circumstance of defense of spouse.

In the instant petition, Andalis again asserts that the RTC and the Court of Appeals erred in not giving credence to his invocation of the justifying circumstance of defense of a relative and in failing to consider that Gonowon was a drug user.

The private complainant filed a Comment[9] dated August 31, 1998 praying that the instant petition be denied as it raises questions of fact which this Court may no longer review and injects new matters, i.e., that Gonowon was a drug addict, which had not been raised in the courts below.

The Office of the Solicitor General filed a Comment[10] dated October 30, 1998 likewise praying for the denial of the instant petition on the same grounds raised by the private complainant.

Andalis filed a Reply[11] dated April 13, 1999 arguing that the trial court's findings that Andalis had no reason to arm himself when he heard his wife's call for help, and that Gonowon was too intoxicated to attempt on the honor of Andalis' wife and did not even know that Andalis' wife was at home are erroneous.

As a rule, the jurisdiction of this Court in petitions for review under Rule 45 of the 1997 Rules of Civil Procedure is limited to reviewing errors of law[12] subject to well-defined exceptions.

In *Pastor v. PNB*,^[13] the Court summarized the exceptional circumstances that may warrant a review by this Court of the findings of fact of the Court of Appeals as follows: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the finding is grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals are based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals in making its findings went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of facts are conclusions without citations of specific evidence on which they are based; (9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which if properly considered would justify a different conclusion; and (10) when the findings of fact by the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.

A perusal of the Reply dated April 13, 1999 reveals an attempt on Andalis' part to ascribe specific errors in the following factual findings of the trial court and the Court of Appeals, which according to him would be enough to justify a review of these factual findings:

In an attempt to show that he did not use a fan knife ("balisong") in stabbing the deceased as claimed by the prosecution witnesses, accused said that he grabbed the knife from the table (where the drinkers gathered) which was used to slice the paksiw (meat with vinegar) and rushed to his house and used it to stab the deceased who was "embracing, kissing and trying to remove the dress of his wife (TSN, pp. 14-15, Oct. 3, 1994; also p. 10, TSN, Oct. 20, 1994). Yet when asked to trace his steps from the place where he urinated to his house, he indicated with broken lines a route directly to his house, on a sketch without going to the table to get the knife from said table where the drinking session took place. This route is illustrated in Exhibit "M".

According to the accused the drinking session was at the yard or in front of the house of Ulysses Salvadora and that house is about 9 to 10 meters away from the house of the accused. Why would he still run to get the knife

from the place or table of the drinking session, which table is out of the way in running to his house at the time of the distress call of his wife?

Accused did not even know what was the problem of his wife. Why did he have to arm himself with a knife?[14]

On the matter of the alleged attempt on the honor of Andalis' wife, the trial court found and the appellate court affirmed:

The number of bottles of gin (marka demonyo) consumed by the drinkers (about six persons) according to Alex Embestro, was about 19 round bottles in all taken from 9:00 o'clock in the morning to 3:00 o'clock in the afternoon, when the incident happened. This quantity of drinks was not disputed by the defense or rebutted. That prosecution witness Alex Embestro was a participant in the drinking session is admitted by the defense. The severe state of intoxication of the deceased is not questioned, for he was present at the drinking session from 9:00 A.M. to 3:00 P.M., when the incident happened. As a matter of fact Vivian Andalis, wife of accused, repeatedly described Pio as 'very, very drunk', when she gave answers on cross-examination by the private prosecutor, Atty. Pardalis:

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Even Flora Andalis-Salvadora, sister of the accused, testified for the defense that even her husband also a participant in that drinking session was also drunk and could not be roused from his noonday nap, when the incident happened. She also stated that when she woke up at 2:30 P.M. from a noonday nap, she saw Pio Gonowon with head resting on his arms on the table. With all those liquor consumed by the group including the deceased, the Court wonders why would the deceased still think of attempting on the honor of the wife of the accused, in that state of drunkenness or intoxication. As admitted by Vivian Andalis, upon being questioned by the court, she never noticed that Pio had any amorous inclination towards her prior to the incident. Experience tells us that a drunken person would rather sleep than go to another's house to try to sexually molest a woman. It is a known fact in medical science that too much alcohol in the blood is a depressant and the libido in a drunken person is suppressed. For—

Alcohol is not a stimulant but a depressant. It acts as a narcotic, depressing the nervous system of the brain and its nerve connections to all parts of the body (p. 20, You and Alcohol, by Dr. Maurice Evans).

The Court is not convinced that there was unlawful aggression, assuming that the theory for the defense is true that there was an attempt on the honor of Vivian. Deceased was very very drunk and all it would take was to push him and he would surely fall down. Vivian left early in the morning for her parents' place as it was Christmas day. At 3:00 P.M. that day, the deceased did not even know that she was there at her house. Why would the deceased make an attempt on her honor when he did not even know she was at her house? Or at least there is no evidence shown that deceased knew she was at home. The version of the defense that the deceased entered the house of the accused as if he knew all the while that she was at home even when she was seen leaving the house early morning of the day of the incident.[15]

Manifestly, the trial court and the Court of Appeals considered the testimonies of the witnesses as well as the documentary evidence presented by both the prosecution and the defense. We, therefore, find no reason to deviate from their findings.

WHEREFORE, the Petition is DENIED. Costs against the petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Rollo, pp. 5-21; Dated May 7, 1998.

[2] Id. at 35-47; Penned by Justice (now retired Supreme Court Justice) Fidel Purisima, concurred in by Justices Corona Ibay Somera and Oswaldo P. Agcaoili; Dated November 27, 1997.

[3] Id. at 49-50.

[4] CA Records, pp. 169-171.

[5] Culled from the decision of the Regional Trial Court and adopted by the Court of Appeals; Rollo, pp. 22-26 and 35-42.

[6] Supra, note 1 at 33.

[7] Id. at 31.

[8] Id. at 33-34.

[9] Id. at 62-70.

[10] Id. at 75-87.

[11] Id. at 102-105.

[12] Sarao v. Court of Appeals, G.R. Nos. 116602-03, August 21, 1997; See also Government Service Insurance System v. National Food Authority, G.R. No. 95573, 249 SCRA 522 (1995) and Carillo v. People, 229 SCRA 386 (1994).

[13] G.R. No. 141316, November 20, 2003.

[14] Supra, note 1 at 29-30; Decision of the RTC.

[15] Supra, note 1 at pp. 44-46.

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