

PETER ANDRADA, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 135222. March 04, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on certiorari filed by Peter Andrada, petitioner, assailing the Decision[1] of the Court of Appeals dated September 18, 1997 in CA-G.R. CR No. 15851 and its Resolution[2] dated August 13, 1998.

In an Information dated January 7, 1987, the Office of the City Prosecutor of Baguio City charged petitioner with frustrated murder committed as follows:

That on or about the 24th day of September 1986, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, with evident premeditation and with treachery, did then and there willfully, unlawfully, and feloniously attack, assault and hack one ARSENIO UGERIO on the head twice with a bolo thereby inflicting upon latter: hacking wound, head, resulting in 1) skull and scalp avulsion vertex; 2) depressed comminuted skull fracture, right parieto occipital with significant brain laceration; operation done; craniectomy; vertex debridement; craniectomy; right parieto occipital; dural repair; debridement, thus performing all the acts of execution which would produce the crime of Murder as a consequence thereof, but nevertheless, the felony was not consummated by reason of causes independent of the will of the accused, that is, by the timely medical attendance extended to Arsenio Ugerio which prevented his death.

CONTRARY TO LAW.[3]

When arraigned on February 9, 1987, petitioner, with the assistance of counsel de parte, pleaded not guilty to the crime charged. The hearing of the case ensued.

Evidence for the prosecution shows that on September 23, 1986, at around 11:30 in the evening, T/Sgt. Teodolfo Sumabong, of the defunct Philippine Constabulary (PC), was resting in the PC barracks at Camp Dado Dangwa, La Trinidad, Benguet when one Rommel Alcate called up requesting police assistance. Alcate claimed that a group of persons was suspiciously roaming around his boarding house in Ferguson Street, Baguio City.

Sgt. Sumabong and two of his companions, Sgt. Gaces and Cpl. Arsenio Ugerio, went to Alcete's boarding house, arriving there past midnight. However, according to Alcate, the suspicious persons have left.

On their way back to the camp at around 1:15 in the morning, the group dropped by Morlow's Restaurant, Bokawkan Street, Baguio City, for a snack. They ordered coffee and sandwiches.

While they were waiting to be served, a woman passed by their table. While Cpl. Ugerio was talking to her, a man, later identified as Peter Andrada, herein petitioner, approached the former and scolded him. Sgt. Sumabong, identifying himself as a PC non-commissioned officer, advised petitioner to pay his bill and go home as he was

apparently drunk.

Petitioner heeded Sgt. Sumabong's advice for he paid his bill and left the restaurant with his companions. While Sgt. Sumabong was paying his bill, he heard Cpl. Ugerio, seated about a meter away, moaning in pain. When Sgt. Sumabong turned around, he saw Cpl. Ugerio sprawled on the floor. Petitioner was hacking him on the head with a bolo. Sgt. Sumabong approached them but petitioner ran away, followed by a companion. Sgt. Sumabong chased them but to no avail.

Upon Sgt. Sumabong's instruction, Sgt. Gaces brought Cpl. Ugerio, the victim, to the St. Louis University Hospital. Then Sgt. Sumabong reported the incident to the police station at Camdas Road and thereafter proceeded to the hospital. When he returned to the police station, he learned that petitioner was arrested in a waiting shed at the corner of Camdas Road and Magsaysay Avenue.

The arresting officers then brought petitioner back to the restaurant where they recovered the bolo used in hacking the victim. Witnesses to the incident were interviewed by the police and they pointed to petitioner as the culprit.

Dr. Francisco Fernandez, a neuro-surgery consultant, found that the victim suffered two (2) major injuries. The first was a "scalping avulsion," around 5 centimeters wide, i.e., the chopping off of a part of the victim's skull. The second was a depressed fracture, about 6 centimeters wide, found on the right parieto occipital area of the skull. Either wound, being fatal, would have caused the death of the victim had it not been for a timely medical treatment. After three (3) days, the victim was transferred to the V. Luna Hospital in Quezon City. Because of the injuries he sustained, he has remained incapable to remember or recall visual stimuli or information.

Petitioner interposed self-defense and invoked the mitigating circumstance of voluntary surrender. His version is that he and one Romy Ramos were drinking beer with a hospitality girl named "Liza" inside Morlow's Restaurant, when three military men occupied the table next to them. They had pistols tucked in their waists. Without any warning or provocation, two of the men, whom he identified as Cpl. Ugerio and Sgt. Sumabong, approached him, slapped his face several times and pointed their guns to his head. They cursed him and threatened to summarily execute him because he was "so boastful." Cpl. Ugerio then "collared" him and dragged him outside the restaurant, while Sgt. Sumabong followed. Fearful that he might be killed, petitioner pulled out his bolo, wrapped in a newspaper, from his waist and swung it at the two military men. He did not see if he hit any of them. Then he ran to his house in Camdas Subdivision. He checked to see if his mother or grandmother was at home so either of them could assist him in surrendering to the police. But neither was present. On his way to surrender to the police, he met his mother accompanied by a policeman. They then proceeded to the police sub-station at Magsaysay Avenue where he surrendered.

After hearing, the trial court rendered its Decision, the dispositive portion of which is quoted below, thus:

WHEREFORE, premises considered, the Court finds the accused PETER ANDRADA guilty beyond reasonable doubt of the crime of frustrated murder.

The Court hereby sentences him to suffer the penalty of imprisonment of 8 years and 20 days as MINIMUM to 14 years, 10 months and 20 days as MAXIMUM; to indemnify the sum of P3,000.00, representing part of the victim's expenses for medical services and medicine, and to pay the costs.

SO ORDERED.[4]

On appeal, the Court of Appeals affirmed with modification the trial court's Decision, thus:

WHEREFORE, THE DECISION APPEALED FROM IS HEREBY AFFIRMED WITH THE MODIFICATION THAT THE APPELLANT IS SENTENCED TO AN INDETERMINATE PENALTY OF FOUR (4) YEARS AND TWO (2) MONTHS OF PRISION CORRECIONAL, AS MINIMUM, TO EIGHT

(8) YEARS AND TWENTY (20) DAYS OF PRISION MAYOR, AS MAXIMUM.

SO ORDERED.[5]

The Court of Appeals, in modifying the imposable penalty, found that petitioner is entitled to the privileged mitigating circumstance of minority as he was only 17 years, 9 months and 20 days old at the time of the incident.

Petitioner then filed a motion for reconsideration, but this was denied by the Appellate Court in its Resolution dated August 13, 1998.

Hence, the instant petition.

The issues for our resolution are: (1) whether petitioner's right to due process was violated; (2) whether his plea of self-defense is in order; (3) whether the crime committed is frustrated murder or frustrated homicide; and (4) whether he is entitled to any mitigating circumstance, assuming he is guilty.

On the first issue, petitioner argues that the Court of Appeals erred in not holding that the trial court violated his constitutional right to due process. He contends that his counsel:

- Failed to present all the witnesses who could have testified that he is innocent of the crime charged;
- Failed to present the medical certificate showing the injuries inflicted upon him by the victim;
- Did not notify him to attend the hearing when Sgt. Sumabong was cross-examined; and
- Failed to submit a memorandum.

In sum, petitioner ascribes gross incompetence or gross negligence to his counsel.

The Office of the Solicitor General (OSG) counters that there was no violation of petitioner's right to due process. Petitioner was represented by counsel of his choice. If the latter's performance and competence fell short of petitioner's expectations, then he should not blame either the trial court or the Court of Appeals.

In criminal cases, the negligence or incompetence of counsel to be deemed gross must have prejudiced the constitutional right of an accused to be heard.[6]

In the following cases, we held that there has been gross negligence or incompetence on the part of counsel for the accused, thus:

In *US v. Gimenez*,[7] we remanded a criminal case for new trial when counsel for an accused inadvertently substituted a plea of guilty for an earlier plea of not guilty, thus resulting in the precipitate conviction of his client.

In *Aguilar v. Court of Appeals and People*,[8] we ordered a dismissed appeal from a conviction for estafa to be reinstated after it was shown that the failure to file the appellant's brief on time was due to sheer irresponsibility on the part of appellant's counsel.

In *De Guzman v. Sandiganbayan*,[9] we remanded the case for reception of evidence after counsel for the accused filed a demurrer to the evidence notwithstanding that his motion for leave of court was denied, thus precluding the accused to present his evidence.

In *Reyes v. Court of Appeals*,[10] we ordered a new trial after a showing that counsel for the accused abandoned her without explanation.

In *People v. Bascuiguin*,[11] we held that the arraignment is not valid. The accused was not properly represented by counsel de officio since he merely conferred with his client for a few minutes and advised him to plead guilty

to the crime of rape with homicide.

None of the foregoing incidents is present in the instant case. Instead, records show that counsel for petitioner actively participated in the cross-examination of the witnesses for the prosecution to test their credibility. At any rate, the fact that he did not choose to present other witnesses did not affect any of petitioner's substantial rights. Besides, said counsel might have valid reasons why he did not call to the witness stand those witnesses.

We note that petitioner was present during the hearing. If he believed that his counsel de parte was not competent, he could have secured the services of a new counsel. He did not. Having decided to retain the services of his counsel during the entire proceedings, petitioner must be deemed bound by any mistake committed by him. For if an accused feels that his counsel is inept, he should take action by discharging him earlier, instead of waiting until an adverse decision is rendered and thereupon blame his counsel for incompetence.[12]

The long-standing rule in this jurisdiction is that a client is bound by the mistakes of his lawyer. Mistakes of attorneys as to the competency of a witness, the sufficiency, relevancy or irrelevancy of certain evidence, the proper defense or the burden of proof, failure to introduce evidence, to summon witnesses, and to argue the case, unless they prejudice the client and prevent him from properly presenting his case, do not constitute gross incompetence or negligence.[13]

Having found that petitioner's counsel was not so inept or motivated by bad faith, or so careless and negligent of his duties as to seriously prejudice the substantial rights of petitioner or prevent him from putting up a proper defense, we hold that he is bound by the decisions of his counsel regarding the conduct of the case.[14]

On the second issue, petitioner invokes self-defense. Hence, it is incumbent upon him to prove by clear and convincing evidence that he indeed acted in defense of himself. For in invoking self-defense, the accused admits killing or seriously wounding the victim and thus, has the burden to justify his act.[15] The requisites of self-defense are: (1) unlawful aggression; (2) reasonable necessity of the means employed to repel or prevent it; and (3) lack of sufficient provocation of the part of the person defending himself.[16]

We find that the petitioner has not adequately discharged his burden of proving the elements of self-defense. The trial court and the Court of Appeals found that at the time he hacked the victim, the latter was still seated while he (petitioner) was behind him. Indeed, how could there be an unlawful aggression on the part of the victim at that instance? Petitioner's bare assertions that the victim slapped him, poked a handgun at him, and threatened to "salvage" him were not duly proved by the evidence for the defense. Rather, the prosecution established that it was petitioner who unexpectedly attacked the victim from behind. Clearly, the aggressor was petitioner. Since the first element of self-defense is not present here, such defense must fail.

On the third issue, petitioner contends that assuming he is guilty, he should only be convicted of frustrated homicide, not frustrated murder. He insists that treachery was not present. His hacking the victim was a "spur-of-the-moment" act prompted by self-preservation.

We are not persuaded. There is *alevosia* when the offender commits any of the crimes against persons employing means, methods, or forms in the execution thereof which tend directly and especially to ensure the execution of the crime without risk to himself from any defense which the offended party might make.[17] We agree with the lower courts that the petitioner planned to kill the victim with treachery in mind. At that time, the victim was seated, having just finished a meal at a late hour. His back was towards petitioner when the latter, without warning, hacked him twice on his head with a bolo. The attack was so sudden and unexpected that the victim had no opportunity either to avert the attack or to defend himself.

Considering that petitioner had performed all the acts of execution which would have resulted in the death of the

victim, had it not been for timely medical assistance, a cause not of the will of the petitioner, and considering further the presence of treachery, then, the crime committed is frustrated murder, not frustrated homicide.

On the fourth issue, petitioner insists that the mitigating circumstance of voluntary surrender should have been appreciated in his favor.

Evidence for the prosecution shows that petitioner, after attacking the victim, ran away. He was apprehended by responding police officers in the waiting shed at the corner of Cambas Road and Magsaysay Avenue. For voluntary surrender to be appreciated, the surrender must be spontaneous, made in such a manner that it shows the interest of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or wishes to save them the trouble and expenses that would be necessarily incurred in his search and capture.[18] Here, the surrender was not spontaneous.

Anent the modification of the penalty by the Court of Appeals, the same is in order.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals dated September 18, 1997 and its Resolution dated August 13, 1998 in CA-G.R. CR No. 15851 are AFFIRMED. Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Corona, Carpio-Morales, and Garcia, JJ., concur.

[1] Rollo at 41-52. Penned by Associate Justice Gloria C. Paras (deceased) and concurred in by Associate Justices Lourdes K.T. Jaguros (retired) and Salvador J. Valdez, Jr.

[2] Id. at 53-54. Per Associate Justice Salvador J. Valdez, Jr., with Associate Justices Eduardo C. Montenegro (retired) and Renato C. Dacudao, concurring.

[3] Id. at 55.

[4] Id. at 61-62.

[5] Id. at 51-52.

[6] Reyes v. Court of Appeals, 335 Phil. 206, 215 (1997).

[7] 34 Phil. 74 (1916).

[8] 320 Phil. 456 (1995)

[9] G.R. No. 103276, April 11, 1996, 256 SCRA 171

[10] G.R. No. 111682, February 6, 1997, 267 SCRA 543.

[11] 418 Phil. 209 (2001)

[12] People v. Salido, G.R. No. 116208, July 5, 1996, 258 SCRA 291, 296.

[13] Tesoro v. Court of Appeals, G.R. No. 36666, December 19, 1973, 54 SCRA 296, 304 citing People v. Ner, G.R. No. 25504, July 31, 1969, 28 SCRA 1151, Rivero v. Santos et al., 98 Phil. 500 (1956), Isaac v. Mendoza, 89 Phil. 279 (1951); Montes v. CFI of Tayabas, 48 Phil. 640 (1926); People v. Manzanilla, 43 Phil. 167 (1922); US v. Dungca, 27 Phil. 274 (1914); US v. Umali, 15 Phil. 33 (1910).

[14] Del Mar v. Court of Appeals, 429 Phil 19, 29 (2002)

[15] People v. Ambrocio, et al., G.R. No. 140267, June 29, 2004 at 18-19, citing People v. Cabical, G.R. No.

148519, May 29, 2003, 403 SCRA 268.

[16] *People v. Pateo and Batuto*, G.R. No. 156786, June 3, 2004 at 6.

[17] *People v. Escote, et al.*, G.R. No. 151834, June 8, 2004 at 6, citing *People v. Conde*, 386 Phil. 859 (2000).

[18] *People v. Marcelo*, G.R. No. 140385, April 14, 2004 at 15, citing *People v. Oco*, G.R. Nos. 137370-71, September 25, 2003, 412 SCRA 190.

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