SERAFIN ABUYEN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 143937. December 05, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is a petition for review on certiorari filed by Serafin Abuyen seeking to reverse and set aside the Decision, dated February 14, 2000, of the Court of Appeals in CA-G.R. CR No. 23097 which affirmed with modification his conviction for the crime of Direct Assault. Likewise sought to be reversed is the Resolution, dated May 22, 2000, of the appellate court denying petitioner's motion for reconsideration.

The Information filed against petitioner with the 9[th] Municipal Circuit Trial Court (MCTC) in Giporlos-Quinapondan, Eastern Samar reads:

> That on or about 1:30 o'clock early in the morning more or less on the 15[th] day of May, 1995 at Del Remedios Street, Poblacion Giporlos, Eastern Samar, Philippines, and within the preliminary jurisdiction of this Honorable Court, the above-named accused influence (sic) with liquor armed with a long sharp pointed bolo (sundang) seriously resisted to drop his weapon and with evident intent to kill, did then and there wilfully, unlawfully and feloniously hacked SP02 Aquilino A. Fabillar with his sharp pointed bolo (sundang), missing by only a fraction more or less two (2) inches and would have continued his criminal act had not the plaintiff fired a shot to the accused feet. To the damage and prejudice of the said Policeman in such amount as may be awarded to him under the Civil Code of the Philippines.
>
> CONTRARY TO LAW.[1]

Before he was arraigned, petitioner moved for the inhibition of the presiding judge of the MCTC. Petitioner alleged, among others, that the private complainant, SP02 Aquilino Fabillar (Fabillar), is the nephew of the presiding judge and that he stood as one of the principal sponsors in the former's wedding. Acting on said motion, the presiding judge denied the motion for lack of merit. Essentially, the presiding judge of the MCTC ruled that his relationship to Fabillar does not fall under any of the grounds for mandatory inhibition enumerated in Rule 137 of the Rules of Court. The presiding judge noted that Fabillar is the principal witness in the case, not the complainant. Besides, the case is under the exclusive jurisdiction of his court.[2]

At his arraignment, petitioner pleaded "not guilty." Trial ensued. The prosecution presented as its witnesses Fabillar and SP01 Oscar Padua. As summarized by the MCTC, their version of what happened is as follows:

> The evidence for the prosecution tend to show that about 1:30 o'clock in the morning of May 15, 1995 while he (i.e., SP02 Aquilino Fabillar) was in his house at Barangay 2, Poblacion, Eastern Samar, preparing for the departure of his children, he heard from outside, the accused shouting and challenging (any)body to a fight. Police Investigator Aquilino Fabillar went out of his house and tried to pacify the accused from disturbing the community, since it was already very early in the morning. The accused refused to be pacified, resisted his police authority and even attempted to challenge him also. He commanded him to drop the long sharp-pointed bolo he was carrying, but refused to do so, which prompted him to fire his service firearm as warning shots,

when the accused brandished his bolo to attack him. After the warning shots the accused ran towards Fabillar Street near the Municipal Police Building.

Subsequently, the policeman and the accused met at the corner of Fabillar and Del Remedio Streets, where again, the accused persisted in his refusal to drop his sharp-pointed bolo and attacked the policeman with his bolo. Shots were fired by the latter one of which hit the right foot of the accused. He dropped his bolo, left behind his right rubber sandal and ran away towards the direction of the seashore. The police officer picked up the bolo and rubber sandal left behind by the accused who ran away and the former brought the bolo and rubber sandal to the police station, presented them to the guard on duty who turned out to be Police Officer Concordio Abuyen and requested for support in arresting the accused. Two police officers, then assigned as patrol officers on duty, Oscar Padua and Dionisio Dayag, accompanied Fabillar in looking for the accused. They failed to find him so they returned to the police station empty-handed.

The long sharp-pointed bolo and the rubber sandal were presented in court and marked as exhibits for the prosecution. Padua testified that he accompanied Aquilino Fabillar and Dionisio Dayag in searching for the accused and at the end of the evidence for the prosecution, Atty. Pastor Ablay, Private Prosecutor, petitioned the court to be allowed to dispense with the testimonies of the last witness, Dionisio Dayag, his testimonies being only corroborative in nature. This was granted by the Court. After the formal offer of evidence, the prosecution rested its case.

Despite some difficulties in trying to testify in English, Police Investigator Fabillar, testified with apparent clarity and Oscar Padua, corroborated his claim of what transpired at a place known as Del Remedio and Fabillar Corner Street in that early morning of May 15, 1995. There seems to be some showing that indeed, the accused met Policeman Aquilino Fabillar which finally resulted in that unfortunate shooting incident.

The foregoing, in a nutshell, is the evidence for the prosecution as testified to by Aquilino Fabillar and Oscar Padua, both of the Giporlos PNP Station. Before the inception of the evidence for the prosecution, it was admitted by the defense that Aquilino Fabillar was and is a member of the Giporlos PNP Station. His qualification as a peace officer, in relation to the charge of Direct Assault, was therefore dispensed with.[3]

For his part, petitioner narrated as follows:

On May 14, 1995 at about 11:00 in the evening, Charito Fabillar, Tony Recote and myself joyfully and friendly joined the company of SP02 Aquilino Fabillar and Leonardo Candilosas who were then having a drinking session in a place near the house of SP02 Aquilino Fabillar at Rizal St., Brgy. 02, Giporlos. I relishly stayed with the group until one o'clock early in the morning unaware however that SP02 Aquilino Fabillar had an ill feeling against me. The ill feeling of SP02 Aquilino Fabillar had its beginning when I openly and strongly supported and campaigned the candidacy for mayorship of Pinong Bagunas, the bitter opponent of Rodito Fabillar, a cousin of SP02 Aquilino Fabillar, during the 1995 local elections. After few hours, SP02 Aquilino Fabillar manifested his harbored ill feeling against me when he confronted me and recalled to me what I did during the elections. He told me that if I only made a mistake when I talked at the Municipal Plaza during a campaign meeting, he would have shoot me. I did not respond to his utterances considering that he was a policeman. Moments later, however, SP02 Aquilino Fabillar suddenly stood up and attempted to drew (sic) his gun tacked on his waist. Sensing imminent danger to my life and limb, I run (sic) away towards Fabillar Street. When I reached the Fabillar Street I was surprised to see SP02 Aquilino Fabillar who was on his motorbike. He asked me to stopped (sic) but I did not because of fear, which prompted him to shoot me hitting my right foot. Despite of the injury I sustained on my right foot, I continue (sic) to run to avoid further and serious injury. x x x[4]

After due trial, the MCTC rendered judgment finding petitioner guilty of Direct Assault. The dispositive portion of the decision reads:

WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of Direct Assault, defined in

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> Article 148 of the Revised Penal Code, there being no mitigating nor aggravating circumstances, the accused, Serafin Abuyen of Barangay Two, Poblacion, Giporlos, Eastern Samar, is hereby sentenced to suffer an imprisonment of the medium period of Prision Correccional medium and maximum or Three (3) Years, Six (6) Months and Twenty-One (21) Days and pay a fine of Five Hundred (P500.00) Pesos and to suffer subsidiary imprisonment in case of insolvency at the rate of P120.00 per day. The sharp-pointed bolo, marked as exhibit "B" for the prosecution, is hereby declared forfeited in favor of the government and to be disposed off (sic) in accordance with law.
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> SO ORDERED.[5]

Aggrieved, petitioner appealed to the Regional Trial Court, Branch 3 of Guiuan, Eastern Samar. Upon finding that the MCTC committed no reversible error in rendering the assailed decision, the RTC affirmed petitioner's conviction.[6]

Petitioner then elevated the case to the Court of Appeals. The appellate court likewise affirmed petitioner's conviction but modified the penalty imposed on him. The dispositive portion of the appellate court's decision reads:

> WHEREFORE, with the modification that the herein petitioner SERAFIN ABUYEN is hereby sentenced to an indeterminate penalty of FOUR (4) MONTHS and ONE (1) DAY of Arresto Mayor, as minimum, to THREE (3) YEARS, SIX (6) MONTHS and TWENTY-ONE (21) days of Prision Correccional, as maximum, the decision appealed from is hereby AFFIRMED and this appeal DISMISSED.[7]

Petitioner now comes to this Court assailing the decision of the CA. In the petition which he himself drafted, petitioner alleges that:

> THE COURT A QUO COMMITTED AN ERROR OF LAW WHEN IT AFFIRMED PETITIONER'S CONVICTION DESPITE UTTER PAUCITY OF SOLID & CONVINCING EVIDENCE OF THE PROSECUTION, HENCE VIOLATIVE OF PETITIONER'S CONSTITUTIONAL RIGHT TO BE PRESUMED INNOCENT UNTIL THE CONTRARY IS PROVED BEYOND REASONABLE DOUBT.[8]

In our Resolution of July 26, 2000, this Court granted petitioner's motion to litigate as pauper. Accordingly, a counsel de oficio was appointed to represent petitioner in this case. In compliance therewith, said counsel de oficio filed a Reply to the Solicitor General's Comment to the petition.

In essence, petitioner impugns the credibility of Fabillar as a witness. In convicting petitioner, the MCTC relied mainly on Fabillar's testimony. Petitioner maintains that Fabillar's testimony is self-serving and replete with inconsistencies. Fabillar allegedly had a grudge against petitioner and that the filing of the criminal case with the court a quo was intended to cover up Fabillar's criminal act of firing a gun at petitioner. Moreover, petitioner puts in issue anew the refusal of the MCTC judge to inhibit himself despite his alleged relationship to Fabillar.

The petition must fail.

It is well-settled in our jurisdiction that the determination of credibility of witnesses is properly within the domain of the trial court as it is in the best position to observe their demeanor and bodily movements.[9] Further, findings of the trial court with respect to the credibility of witnesses and their testimonies are entitled to great respect, and even finality, unless said findings are arbitrary, or facts and circumstances of weight and influence have been overlooked, misunderstood, or misapplied by the trial judge which, if considered, would have affected the case.[10] These findings are binding on this Court especially when affirmed by the appellate court.[11]

In this case, the trial court gave credence to the positive testimony of Fabillar. On the other hand, it gave scant consideration to the negative and self-serving testimony of petitioner. The MCTC made the following findings

and conclusion:

> x x x At any rate, it is a settled principle in this jurisdiction that positive assertions may not be overcome by mere denials. To top it all, Aquilino Fabillar, a police officer, is presumed to have been regularly performing his official duties as such. This is a presumption in law which must be overcome by strong and convincing evidence to the contrary. The accused however failed on this aspect. All that he did was to deny the charges against him. It is of course pleasantly surprising that after (sic) from the place where he had that drinking spree with the accused, he went near the Police Station, but `forgot' to go directly thereto and report the incident or asked protection from the police. He told the court that Concordio Abuyen, the Guard on Duty at the time of the incident is his close relative. But surprisingly, he did not even asked (sic) policeman Abuyen for his support since then until now. If indeed it was true that he had no fault, why did he ran (sic) away from the place of the drinking spree where his companions were. Why did he not ask one or two of them to testify in his favor? All these point to a logical conclusion that the accused really had that sharp-pointed bolo, shouting and challenging everybody to a fight and ultimately, resisted, challenged and assaulted Aquilino Fabillar in the process. The long-pointed bolo was deposited in the police station by Fabillar together with the right pair of a rubber sandal, hence it is quite believable that it came from the possession of the accused. And this court believes furthermore that he used the said bolo in resisting and assaulting the police officer.[12]

The findings and conclusion of the trial court had been consistently affirmed by the appellate courts, namely, the RTC and the CA. Absent a clear showing that these courts "overlooked, misunderstood, or misapplied" certain material facts, this Court is not inclined to depart from the aforecited rule and overturn these courts' findings.

Lastly, the CA correctly held that it is now too late at this stage for petitioner to assail the failure of the presiding judge of the MCTC to inhibit himself from the case despite his alleged relationship to Fabillar. Petitioner should have seasonably filed a petition for certiorari or prohibition when his motion for inhibition was denied by the MCTC judge. This, he did not do. Moreover, as pointed out by the CA, petitioner did not even raise this issue when he appealed his conviction to the RTC. In any case, petitioner has failed to substantiate his allegation that indeed the MCTC judge is related to Fabillar within the sixth degree of consanguinity to warrant mandatory inhibition by the judge under Rule 137 of the Rules of Court. More importantly, petitioner has likewise failed to show that "the judge had an interest, personal or otherwise, in the prosecution of the case at bar. He is therefore presumed to have acted regularly and in the manner to preserve the ideal of `the cold neutrality of an impartial judge' implicit in the guarantee of due process."[13]

WHEREFORE, the petition is hereby DENIED for lack of merit. The Decision, dated February 14, 2000, of the Court of Appeals in CA-G.R. CR No. 23097 and its Resolution, dated May 22, 2000, are AFFIRMED in toto.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Rollo, pp. 34-35.

[2] Id., pp. 36-37.

[3] Id., pp. 37-39.

[4] Id., pp. 39-40.

[5] Id., p. 40.

[6] Id., pp. 40-41.

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[7] Id., pp. 45-46.

[8] Id., p. 26.

[9] People vs. Orio, 330 SCRA 576 (2000); People vs. Rendoque, 322 SCRA 622 (2000).

[10] Ibid.

[11] Galang vs. Court of Appeals, 324 SCRA 139 (2000).

[12] Rollo, pp. 44-45.

[13] People vs. Tabarno, 242 SCRA 456 (1995).

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