LYDIO ALVERO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 145209. June 08, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before trial, an accused has the right to remain silent. During trial, an accused has the right not to be compelled to be a witness against himself. An accused who waives these rights by speaking to the police or testifying in court cannot complain that his statements were used to convict him.

This is an appeal by certiorari under Rule 45 of the Rules of Court from the Decision[1] of the Court of Appeals dated 15 March 2000 affirming the Regional Trial Court's (RTC) judgment of conviction, and the 23 August 2000 Resolution[2] denying petitioner's motion for reconsideration of such Decision.

The factual and procedural antecedents of the case are as follows:

An information was filed with the RTC of Surallah, South Cotabato, charging petitioner Lydio Alvero with the crime of Homicide with Double Physical Injuries and Damage to Properties Through Reckless Imprudence, allegedly committed as follows:

> That on or about the 9[th] day of September, 1991 in the afternoon thereof, along the National Highway, Brgy. Liwanay, Municipality of Banga, Province of South Cotabato, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being then the driver of a motor vehicle (Jeepney Type: Jumbo 747) bearing Plate Number LVK-365 owned by Yellow Bus Line, Incorporated, a duly registered corporation with principal address at Koronadal, South Cotabato did then and there wilfully, unlawfully and feloniously drive and operate the said motor vehicle in a careless, reckless and imprudent manner and without due regard to the existing traffic rules and regulations nor regard to the safety of the lives and limbs of the people nor safety to properties, thus in the course of such careless, reckless and imprudent manner of driving of the herein described motor vehicle, the above named accused bumped a HONDA 155 TMX motorcycle with Plate Number MC LE-5013 owned by Liberato Filizarta then being driven by Wilfredo Alferez and which bumping resulted in the death of Paulino Rondina, a passenger of the Honda 155 TMX motorcycle and inflicted serious physical injuries on Wilfredo Alferez and Nestor Villa, another passenger of the latter vehicle; that the said bumping further resulted in destructions and losses of various personal properties belonging to the herein named victims and to Liberato Felizarta, the exact total amount of which shall be deliberated upon and proven in a separate civil complaint to be filed by the aggrieved parties as shown by a manifestation filed by them and attached with the records of this case.[3]

On 27 July 1992, accused entered a plea of "Not Guilty." Trial ensued, in the course of which the prosecution presented in evidence the oral testimonies of the following witnesses: (1) Investigating Officer Luvimin Servañez of the Philippine National Police; (2) eyewitness Alex Bacolor; and (3) one of the alleged victims, Nestor Villa.

As summarized by the RTC, the prosecution's evidence tends to establish the following:

- Luvimin Servañez is a PNP member detailed at Banga, South Cotabato. On September 9, 1991 he was the traffic officer in charge at Banga. The station commander informed him of a vehicular accident which took place while he was at the public market at about 4:00 p.m. so he at once proceeded to the police station where he saw a passenger jeepney owned by Yellow Bus Line, Inc. parked near the police station.

He identified a picture of the front portion of the jeep (Exh. A) with Plate No. LVK 365. He learned at the police station that said jeep bumped a motorcycle. The jeep driver is the accused Lydio Alvero. The accused voluntarily surrendered to the police at the police station.

He proceeded to the scene of the incident at Liwanay, Banga. While there were people at the scene nobody answered [the] questions he asked. He made a sketch of the scene and took pictures of the motorcycle (Exh. B).

He pointed to an alleged tire mark of the motorcycle in a picture on the left lane going to Banga (Exh. C). And he found the motorcycle which figured in the incident away from the cemented road on the left lane of it going to Koronadal (Exh. B). It was lying four meters away from the edge of the road.

He learned that the motorcycle driver was brought to Landero's Clinic where he could not interview said driver who was unconscious. So he brought the motorcycle to the Banga police station (Exh. D and E).

The part of the jeep which allegedly bumped the motorcycle is the left front bumper (Exh. A, A-1).

A sketch drawn by this witness (Exh. G) was identified by him. Said sketch was on his own perception of the incident as according to him no person in the scene did answer his questions. It appears the said sketch was shown without basis.

The accused adopted the exhibits of the prosecution as his own exhibits: Exh. A as Exh. 1; Exh. B as Exh. 2; C as 3; D as 4; E as 5; F as 6; and G as 7.

The motorcycle was bumped on its rear portion.

On cross-examination this witness identified his sworn statements (Exh. 8 or H). The road where the incident happened is straight and plain.

- Alex Bacolor was riding on a truck in the afternoon of September 9, 1991 coming from Marbel going to Surallah. While near Liwanay, Banga he saw the jeep of the Yellow Bus Line bumped a motorcycle. The motorcycle was on the right lane of the road going to Marbel. At the back of the driver of the motorcycle were Nestor Villa and Sgt. Rondina. The motorcycle was coming from his (Bacolor's) opposite direction.

The jeep was following the motorcycle. It was the rear portion of the motorcycle which was bumped. The truck returned to where the incident happened and took the victims to Landero's clinic. Actually the bumping he saw took place when the truck he was riding had already passed by the motorcycle followed by the jeep.

The jeep which bumped left the motorcycle and the victims.

- Nestor Villa is a civilian agent of the NARCOM. Between 4:00 to 5:00 p.m. on September 9, 1991 he was riding on the motorcycle which figured in the incident. A certain Alferes was driving the motorcycle and Sgt. Rondina was also on the motorcycle.

At Liwanay, Banga the motorcycle where he rode was bumped on its rear. It was bumped on the right lane of the highway going to Marbel or Koronadal (p. 30, tsn - 9/15/92). At the back of the driver he was seated and at his back was Sgt. Rondina.

Coming from the opposite direction he saw an Isuzu Elf truck.

After the bumping sound he lost consciousness and recovered it only at the provincial hospital. He does not

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know how much he spent for his hospitalization for two weeks.

The vehicle was following very near the motorcycle (p. 34, ibid).[4]

The defense presented the testimonies of Armado Fanela and the accused Lydio Alvero. Their testimonies, as summarized by the trial court, are as follows:

- Lydio Alvero the driver of the passenger jeep of the Yellow Bus Line, Inc. which bumped the motorcycle was already 57 years old. While he had already 25 years behind him as a driver he only had 8 years driving experience with the Yellow Bus Line.

Here is how the accident happened as told by the accused. He was following a motorcycle from Surallah. He was about to overtake it. But the motorcycle swerved to the left.

He first saw the motorcycle near the cockpit at Surallah. He followed it for about 25 or 30 meters distance at the speed of 40 kilometers per hour while the motorcycle was at the speed of 45 kilometers per hour.

While he was about to overtake the motorcycle at a crossing, the motorcycle slowed down until he was about seven meters away from the motorcycle. He also slowed down and applied his brake and turned to the right but still he hit or bumped the motorcycle. He was not able to evade hitting the motorcycle.

The distance from the front of his jeep to the back of the motorcycle was only three to two and one-half meters. He bumped the motorcycle on the left of the road going to Marbel. The jeep was then about two feet from the center line of the road. And he did not see the signal light of the motorcycle then.

The swerving of the motorcycle to the left was sudden so he returned to the right as he was already driving his jeep on the left side of the road in the process of overtaking the motorcycle.

After bumping the motorcycle, the motorcycle was thrown out of the road about six meters away. Then he drove backward to load the victim but the passengers shouted: "Tay, proceed they have pistols."

He walked to the municipal hall of Banga and reported the incident.

The gross width of the motorcycle was about one-half foot, yet he was not able to evade it as the swerving to the left was too sudden. Before attempting to overtake the motorcycle he blew the jeep's horn.

On cross-examination he revealed that at the poblacion the speed of his jeep was 40 kilometers per hour. From the cockpit to the scene of the accident his speed was 30 kilometers per hour. He drove at this slow speed so he would not hit the motorcycle.

The passengers of the motorcycle were not unconscious after the bumping. The driver of the motorcycle and Villa stood up. He did not see anyone holding a gun then.

- Armando Fanela is the conductor of the jeep driven by the accused when it bumped the motorcycle. The accident took place at 4:00 p.m. on September 9, 1991.

A lady passenger of the jeep said "Ay" and then he saw the motorcycle in front of the jeep about to be bumped by the jeep. Then the motorcycle was only one meter away from the jeep.

The jeep was going to Marbel, and so with the motorcycle going in the same direction. The motorcycle when hit was thrown to the side of the road.

On cross-examination he revealed that he did not see the motorcycle before the lady shouted: "Ay". And when he saw the motorcycle the bumping happened in a second. After hearing "Ay" he did not hear [the] sound of screeching of the tire. He did not remember if a horn was blown then.[5]

On 4 January 1994, the trial court found the accused guilty, sentencing him as follows:

> In view of the foregoing, the court finds the accused Lydio Alvero guilty beyond reasonable doubt of reckless imprudence resulting to the death of Paulino Rondina, the injury of Nestor Villa and the loss of the handcuff and sun glasses of the latter, and hereby sentences said accused the penalty of an imprisonment of two years, four months and one day of prision correccional in its medium period as its minimum to four years, two months and one day of prision correccional in its maximum period as its maximum, and to indemnify the surviving heirs of the victim Paulino Rondina, except his widow, in the sum of P20,000.00 and to Nestor Villa the sum of P700.00 for actual damages representing the value of his losses duly proved.[6]

Petitioner appealed the guilty verdict to the Court of Appeals, which affirmed the trial court in the assailed decision and resolution. The assailed decision reads:

> WHEREFORE, finding no reversible error in the decision appealed from, We hereby AFFIRM the same and DISMISS the instant appeal.
>
> No costs.[7]

Hence, this petition, where petitioner raises the following issues:

> - Whether or not the Court of Appeals, in its Decision affirming the trial court's judgment of conviction, erred by failing to discuss and reason out on the basis of the prosecution evidence, and by assailing instead what it perceived to be weaknesses in the defense evidence.
>
> - Whether or not the prosecution has in fact proved the petitioner guilty of gross negligence beyond reasonable doubt.
>
> - Whether or not the Court of Appeals erred in assessing and rejecting the petitioner's defense as weak, assuming for the sake of argument that there was any need for petitioner to put up any defense.

We uphold the findings of the trial court and the Court of Appeals. All that are assailed in this petition are factual findings which this Court, as a general rule, is bereft of authority to pass upon. Findings of fact of the trial court, especially when upheld by the Court of Appeals, are binding on the Supreme Court[8] except in certain instances.[9]

The prosecution was able to prove
the negligence of the accused
beyond reasonable doubt.

Petitioner posits, thus, that the judgment of conviction rendered against him by the trial court and affirmed by the Court of Appeals was not sufficiently supported or established by the prosecution evidence.

According to petitioner, neither the trial court nor the Court of Appeals assessed the prosecution evidence, and instead, directly assailed the supposed weaknesses of the defense evidence.[10] Petitioner alleged that the findings concerning his negligence were based entirely on the evidence of the defense and not on the prosecution evidence.[11]

The allegation that the finding of negligence was based entirely on the evidence of the defense is belied by the records of the case. The prosecution had presented the Investigation Report on Vehicular Accident[12] and the sketch plan[13] prepared by SPO3 Luvimin Servañez as evidence of the relative distances of the point of impact and the position of the vehicles after the incident. The prosecution also presented the testimony of Nestor Villa to show that the jeepney was following the motorcycle very closely. Whether the testimonies of these witnesses are credible and to be accorded great weight in establishing the negligence of the accused beyond reasonable doubt is for the trial court to determine, as it is the trial court which had the opportunity to observe Luvimin Servañez and Nestor Villa as they testified.[14]

The mere fact that a vehicle is trying to overtake another imposes upon the driver of the overtaking vehicle a far greater amount of responsibility than is usual, and gives rise to a reasonable presumption of negligence on the part of such person in case of an accident. The definition of negligence in the Civil Code is instructive:

> Art. 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place.
> x x x

The circumstances in a situation wherein a person is driving a vehicle overtaking another require of that person a greater amount of diligence for the following reasons: (1) it was the overtaker's decision to assume the risks involved in overtaking another; and (2) the overtaker, being behind the vehicle sought to be overtaken, is in a better position to ensure the safety of the vehicles concerned. It is therefore the responsibility of the person driving a vehicle overtaking another to ensure the safety of all the vehicles, passengers, and pedestrians in the immediate vicinity.

Petitioner claims that the prosecution "failed to present evidence of what speed the jeep (or jeepney) was running at except, the vague testimony of Nestor Villa, to the effect that, as they were nearing the place of the incident, it was 'as if' the vehicle that was following the motorcycle was 'very near because (its) sound was becoming louder.'"[15] This Court does not find Nestor Villa's testimony vague. The witness was testifying on the proximity of the jeep based on his sense of hearing, instead of his sense of sight. He clearly used the words "as if" because he did not see the jeep getting close to them, but instead heard it.

Petitioner claims that the trial court misunderstood the accused's vague, irrelevant and non-responsive answer to the following question:

> Q: At the time when the motorcycle suddenly turned to the left(,) on which part of the road you were then driving the jeepney?
>
> A: At Crossing Andam.[16]

Petitioner claims the responsive answer should have been a part of the road, and yet the answer "Crossing Andam" can be construed as a proper noun, as referring to a particular place, and not to a part of the road. This attempt of petitioner to give an appearance of vagueness to his own testimony fails miserably. Firstly, as discussed above, negligence is presumed even in the absence of a crossing, because the fact that the accident occurred during an attempt to overtake another vehicle (and a much smaller vehicle at that) puts upon the overtaker a great amount of responsibility, thus shifting the burden of evidence to the overtaker to prove his exercise of the diligence required by the circumstances. Secondly, if a witness answers a question, it should be presumed that he understood the question, especially in this case wherein his own counsel did not raise any objection to the question for vagueness, nor moved to strike out the answer. Assuming that the witness misunderstood the question is a great leap in reasoning that should not be countenanced.

Petitioner further claims that the six-meter distance within which the motorcycle was thrown from the point of impact should not have given rise to a conclusion concerning the relative speeds of the vehicles. According to petitioner:

> [I]f it were a head on collision, that [six-meter] distance would probably be sufficiently indicative of a strong impact resulting from high speeds. In this case, it is different because the impact was practically pushing the motorcycle towards the same or about the same direction it was headed to, probably with its engine still running. The law of inertia aided its tendency to move on and in a straight line.[17]

It is important to note that the sketch plan presented by the prosecution actually showed a distance of eight meters

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from the point of impact, contrary to the six meters that was claimed by the accused.[18] The sketch plan further showed that such eight-meter distance from the point of impact was not toward the same direction to which the vehicles were headed, but was instead around 45 degrees to the left from the direction of the vehicles. Inertia in the motorcycle could have indeed accounted for the component of the force that carried it forward. The component of such force, however, that threw the motorcycle to the left was solely from the impact, as the motorcycle (and the force of inertia) was headed forward before the impact.

All of the foregoing show that there is no truth to the allegation that the findings concerning the negligence of the accused were based entirely on the evidence of the defense. Again, these are all academic as the findings of fact of the trial court which were affirmed by the Court of Appeals have already attained finality. On examination of the evidence on record, we fail to find any reversible error in the factual findings of the RTC and the Court of Appeals.

Using pieces of information derived
from the evidence of the defense
is not assailing the weaknesses of the
defense.

As discussed above, petitioner's allegation that the Court of Appeals relied solely on the evidence of the accused in finding his guilt is belied by the records of the case. To prevent future use of such contention, however, we still find it significant to point out that petitioner's line of reasoning is misguided.

Even assuming that the trial court and the Court of Appeals relied on the evidence presented by the defense in its determination of the negligence of the accused, petitioner's argument that this is an attack on the weakness of the defense remains to have no merit. Using pieces of information derived from the evidence of the defense is not equivalent to assailing the weaknesses of the defense. Incriminating evidence coming from the lips of the accused and his witnesses are naturally more damaging to the accused. Such evidence may and should be used by the court, having as it does great weight brought about by the undisputed character of such evidence.

The courts, when they find the accused guilty, are more inclined to cite defense evidence instead of prosecution evidence tending to prove the same thing, as the former are judicial admissions that the accused cannot possibly contest. The accused has been warned that whatever he says may and shall be used against him. Before trial, an accused has the right to remain silent. During trial, an accused has the right not to be compelled to be a witness against himself.[19] An accused who waives these rights by speaking to the police or testifying in court cannot complain that his statements were used to convict him.

The compensation to the heirs
of Paolino Riondina should be
P50,0000.00.

Finally, pursuant to recent decisions[20] of this Court regarding the indemnification to the heirs of victims in case of death (which comes in the nature of moral damages), we likewise resolve to raise the compensation to the heirs of Paulino Rondina to P50,000.00.

WHEREFORE, the decisions of the trial court and the Court of Appeals are AFFIRMED, with the MODIFICATION that the moral damages to the surviving heirs of the victim Paulino Rondina, except his widow, shall be in the sum of P50,000.00.

SO ORDERED.

Panganiban, C.J., (Chairperson), Austria-Martinez, (Acting Chairman), and Callejo, Sr., JJ., concur.
Ynares-Santiago, J., on leave.

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[1] CA-G.R. CR No. 21118, penned by Associate Justice (now Supreme Court Associate Justice) Cancio C. Garcia with Associate Justices Martin S. Villarama, Jr. and Andres B. Reyes, Jr., concurring; Rollo, pp. 44-54.

[2] Id., p. 63.

[3] Records, pp. 1-2.

[4] Id., pp. 192-193.[5] Rollo, pp. 193-194.

[6] Records, p. 198.[7] Rollo, p. 54.

[8] Sps. Lagandaon v. Court of Appeals, 352 Phil. 928, 941 (1998); Fuentes v. Court of Appeals, 335 Phil. 1163, 1168 (1997).

[9] "It is a settled rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court. However, the Court had recognized several exceptions to this rule, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion." (The Insular Life Assurance Company, Ltd. v. Court of Appeals, G.R. No. 126850, 28 April 2004, 428 SCRA 79, 85-86.)[10] Rollo, p. 225.[11] Id., p. 223.[12] Folder of Exhibits, Exhibit F, p. 2.

[13] Id., Exhibit G, p. 3.

[14] See People v. Mijano, 370 Phil. 84, 92-93 (1999); People v. Lomboy, 368 Phil. 755, 765-766 (1999); Jacobo v. Court of Appeals, 337 Phil. 7, 18-19 (1997).[15] Rollo, p. 223.[16] Id., p. 5.[17] Id., pp. 248-249.[18] Folder of Exhibits, Exhibit G, p. 3. As to be discussed in the succeeding pages, the trial court is merely more inclined to quote evidence coming from the defense which tend to prove the guilt of the accused, simply because they are judicial admissions which the accused cannot contest.[19] RULES OF COURT, Rule 115, Section 1(e); Constitution, Art. III, Sec. 17.[20] Victory Liner, Inc. v. Gammad, G.R. No. 159636, 25 November 2004, 444 SCRA 355, 370; People v. Ventura, G.R. Nos. 148145-46, 5 July 2004, 433 SCRA 389, 421; People v. Malinao, G.R. No. 128148, 16 February 2004, 423 SCRA 34, 53; People v. Panado, 401 Phil. 906, 919 (2000).

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