

ROLLIE CALIMUTAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, ET AL., RESPONDENTS.

G.R. NO. 152133. February 09, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

In this Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court, petitioner Rollie Calimutan prays for the reversal of the Decision of the Court of Appeals in CA-G.R. CR No. 23306, dated 29 August 2001,[1] affirming the Decision of the Regional Trial Court (RTC), Branch 46, of Masbate, Masbate, in Criminal Case No. 8184, dated 19 November 1998,[2] finding petitioner Calimutan guilty beyond reasonable doubt of the crime of homicide under Article 249 of the Revised Penal Code.

The Information[3] filed with the RTC charged petitioner Calimutan with the crime of homicide, allegedly committed as follows –

That on or about February 4, 1996, in the morning thereof, at sitio Capsay, Barangay Panique, Municipality of Aroroy, Province of Masbate, Philippines within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and throw a stone at PHILIP CANTRE, hitting him at the back left portion of his body, resulting in laceration of spleen due to impact which caused his death a day after.

CONTRARY TO LAW.

Masbate, Masbate, September 11, 1996.

Accordingly, the RTC issued, on 02 December 1996, a warrant[4] for the arrest of petitioner Calimutan. On 09 January 1997, however, he was provisionally released[5] after posting sufficient bailbond.[6] During the arraignment on 21 May 1997, petitioner Calimutan pleaded not guilty to the crime of homicide charged against him.[7]

In the course of the trial, the prosecution presented three witnesses, namely: (1) Dr. Ronaldo B. Mendez, a Senior Medico-Legal Officer of the National Bureau of Investigation (NBI); (2) Belen B. Cantre, mother of the victim, Philip Cantre; and (3) Rene L. Sañano, companion of the victim Cantre when the alleged crime took place. Their testimonies are collectively summarized below.

On 04 February 1996, at around 10:00 a.m., the victim Cantre and witness Sañano, together with two other companions, had a drinking spree at a videoke bar in Crossing Capsay, Panique, Aroroy, Masbate. From the videoke bar, the victim Cantre and witness Sañano proceeded to go home to their respective houses, but along the way, they crossed paths with petitioner Calimutan and a certain Michael Bulalacao. Victim Cantre was harboring a grudge against Bulalacao, suspecting the latter as the culprit responsible for throwing stones at the Cantre's house on a previous night. Thus, upon seeing Bulalacao, victim Cantre suddenly punched him. While Bulalacao ran away, petitioner Calimutan dashed towards the backs of victim Cantre and witness Sañano. Petitioner Calimutan then picked up a stone, as big as a man's fist, which he threw at victim Cantre, hitting him at the left

side of his back. When hit by the stone, victim Cantre stopped for a moment and held his back. Witness Sañano put himself between the victim Cantre and petitioner Calimutan, and attempted to pacify the two, even convincing petitioner Calimutan to put down another stone he was already holding. He also urged victim Cantre and petitioner Calimutan to just go home. Witness Sañano accompanied victim Cantre to the latter's house, and on the way, victim Cantre complained of the pain in the left side of his back hit by the stone. They arrived at the Cantre's house at around 12:00 noon, and witness Sañano left victim Cantre to the care of the latter's mother, Belen.[8]

Victim Cantre immediately told his mother, Belen, of the stoning incident involving petitioner Calimutan. He again complained of backache and also of stomachache, and was unable to eat. By nighttime, victim Cantre was alternately feeling cold and then warm. He was sweating profusely and his entire body felt numb. His family would have wanted to bring him to a doctor but they had no vehicle. At around 3:00 a.m. of the following day, 05 February 1996, Belen was wiping his son with a piece of cloth, when victim Cantre asked for some food. He was able to eat a little, but he also later vomited whatever he ate. For the last time, he complained of backache and stomachache, and shortly thereafter, he died.[9]

Right after his death, victim Cantre was examined by Dr. Conchita S. Ulanday, the Municipal Health Officer of Aroroy, Masbate. The Post-Mortem Examination Report[10] and Certification of Death,[11] issued and signed by Dr. Ulanday, stated that the cause of death of victim Cantre was cardio-respiratory arrest due to suspected food poisoning. The body of victim Cantre was subsequently embalmed and buried on 13 February 1996.

Unsatisfied with the findings of Dr. Ulanday, the Cantre family, with the help of the Lingkod Bayan-Circulo de Abogadas of the ABS-CBN Foundation, requested for an exhumation and autopsy of the body of the victim Cantre by the NBI. The exhumation and autopsy of the body of the victim Cantre was conducted by Dr. Ronaldo B. Mendez on 15 April 1996,[12]after which, he reported the following findings –

Body; fairly well-preserved with sign of partial autopsy; clad in white Barong Tagalog and blue pants placed inside a wooden golden-brown coffin and buried in a concrete niche.

Contused-abrasion, 2.3 x 1.0 cms., posterior chest wall, left side.

Hematoma, 16.0 x 8.0 cms., abdomen, along mid-line.

Hemoperitoneum, massive, clotte [sic].

Laceration, spleen.

Other visceral organ, pale and embalmed.

Stomach contains small amount of whitish fluid and other partially digested food particles.

X X X X

CAUSE OF DEATH: TRAUMATIC INJURY OF THE ABDOMEN.

In his testimony before the RTC, Dr. Mendez affirmed the contents of his exhumation and autopsy report. He explained that the victim Cantre suffered from an internal hemorrhage and there was massive accumulation of blood in his abdominal cavity due to his lacerated spleen. The laceration of the spleen can be caused by any blunt instrument, such as a stone. Hence, Dr. Mendez confirmed the possibility that the victim Cantre was stoned to death by petitioner Calimutan.[13]

To counter the evidence of the prosecution, the defense presented the sole testimony of the accused, herein petitioner, Calimutan.

According to petitioner Calimutan, at about 1:00 p.m. on 04 February 1996, he was walking with his house helper, Michael Bulalacao, on their way to Crossing Capsay, Panique, Aroroy, Masbate, when they met with the

victim Cantre and witness Sañano. The victim Cantre took hold of Bulalacao and punched him several times. Petitioner Calimutan attempted to pacify the victim Cantre but the latter refused to calm down, pulling out from his waist an eight-inch Batangas knife and uttering that he was looking for trouble, either "to kill or be killed." At this point, petitioner Calimutan was about ten meters away from the victim Cantre and was too frightened to move any closer for fear that the enraged man would turn on him; he still had a family to take care of. When he saw that the victim Cantre was about to stab Bulalacao, petitioner Calimutan picked up a stone, which he described as approximately one-inch in diameter, and threw it at the victim Cantre. He was able to hit the victim Cantre on his right buttock. Petitioner Calimutan and Bulalacao then started to run away, and victim Cantre chased after them, but witness Sañano was able to pacify the victim Cantre. Petitioner Calimutan allegedly reported the incident to a kagawad of Barangay Panique and to the police authorities and sought their help in settling the dispute between Bulalacao and the victim Cantre. Bulalacao, meanwhile, refused to seek medical help despite the advice of petitioner Calimutan and, instead, chose to go back to his hometown.[14]

Petitioner Calimutan was totally unaware of what had happened to the victim Cantre after the stoning incident on 04 February 1996. Some of his friends told him that they still saw the victim Cantre drinking at a videoke bar on the night of 04 February 1996. As far as he knew, the victim Cantre died the following day, on 05 February 1996, because of food poisoning. Petitioner Calimutan maintained that he had no personal grudge against the victim Cantre previous to the stoning incident.[15]

On 19 November 1998, the RTC rendered its Decision,[16]essentially adopting the prosecution's account of the incident on 04 February 1996, and pronouncing that –

It cannot be legally contended that the throwing of the stone by the accused was in defense of his companion, a stranger, because after the boxing Michael was able to run. While it appears that the victim was the unlawful aggressor at the beginning, but the aggression already ceased after Michael was able to run and there was no more need for throwing a stone. The throwing of the stone to the victim which was a retaliatory act can be considered unlawful, hence the accused can be held criminally liable under paragraph 1 of Art. 4 of the Revised Penal Code.

The act of throwing a stone from behind which hit the victim at his back on the left side was a treacherous one and the accused committed a felony causing physical injuries to the victim. The physical injury of hematoma as a result of the impact of the stone resulted in the laceration of the spleen causing the death of the victim. The accused is criminally liable for all the direct and natural consequences of this unlawful act even if the ultimate result had not been intended. (Art. 4, Par. 1, Revised Penal Code; People vs. Narciso, CA-G.R. No. 03532-CR, Jan. 13, 1964)

One is not relieved from criminal liability for the natural consequences of one's illegal acts merely because one does not intend to produce such consequences (U.S. vs. Brobst, 14 Phil. 310).

The crime committed is Homicide as defined and penalized under Art. 249 of the Revised Penal Code.

WHEREFORE, the Court finds and so holds that accused ROLLIE CALIMUTAN is GUILTY beyond reasonable doubt of the crime of Homicide defined and penalized under Art. 249 of the Revised Penal Code with no mitigating or aggravating circumstance and applying the Indeterminate Sentence Law hereby imposes the penalty of imprisonment from EIGHT (8) YEARS of Prison Mayor as minimum, to TWELVE (12) YEARS and ONE (1) DAY of Reclusion Temporal as maximum, and to indemnify the heirs of Philip Cantre the sum of Fifty Thousand (P50,000.00) Pesos as compensatory damages and the sum of Fifty Thousand (P50,000.00) Pesos as moral damages, without subsidiary imprisonment in case of insolvency.

Petitioner Calimutan appealed the Decision of the RTC to the Court of Appeals. The Court of Appeals, in its Decision, dated 29 August 2001,[17]sustained the conviction of homicide rendered by the RTC against petitioner

Calimutan, ratiocinating thus –

The prosecution has sufficiently established that the serious internal injury sustained by the victim was caused by the stone thrown at the victim by the accused which, the accused-appellant does not deny. It was likewise shown that the internal injury sustained by the victim was the result of the impact of the stone that hit the victim. It resulted to a traumatic injury of the abdomen causing the laceration of the victim's spleen.

This is clearly shown by the autopsy report prepared by Dr. Ronaldo Mendez, a Senior Medico Legal Officer of the NBI after the exhumation of the victim's cadaver...

The Court cannot give credence to the post mortem report prepared by Municipal Health Officer Dr. Conchita Ulanday stating that the cause of the victim's death was food poisoning. Dr. Ulanday was not even presented to testify in court hence she was not even able to identify and/or affirm the contents of her report. She was not made available for cross-examination on the accuracy and correctness of her findings.

Dr. Conchita Ulanday's post mortem report cannot prevail over the autopsy report (Exh. "C") of the Medico-Legal Officer of the NBI who testified and was cross-examined by the defense.

Besides, if accused-appellant was convinced that the victim indeed died of food poisoning, as reported by Dr. Conchita Ulanday, why did they not present her as their witness to belie the report of the Medico-Legal Officer of the NBI.

The trial court's evaluation of the testimony of Dr. Mendez is accorded the highest respect because it had the opportunity to observe the conduct and demeanor of said witness.

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Masbate, Branch 46, finding accused-appellant guilty beyond reasonable doubt of the crime of homicide is hereby AFFIRMED.

The Court of Appeals, in its Resolution, dated 15 January 2002,[18] denied the Motion for Reconsideration filed by petitioner Calimutan for lack of merit since the issues raised therein had already been passed and ruled upon in its Decision, dated 29 August 2001.

Comes now petitioner Calimutan, by way of the present Petition for Review on Certiorari, seeking (1) the reversal of the Decisions of the RTC, dated 19 November 1998, and of the Court of Appeals, dated 29 August 2001, convicting him of the crime of homicide; and, (2) consequently, his acquittal of the said crime based on reasonable doubt.

Petitioner Calimutan contended that the existence of the two autopsy reports, with dissimilar findings on the cause of death of the victim Cantre, constituted reasonable doubt as to the liability of petitioner Calimutan for the said death, arguing that –

x x x [I]t was Dra. Conchita Ulanday, Municipal Health Officer of Aroroy, Masbate was the first physician of the government who conducted an examination on the cadaver of the victim Philip Cantre whose findings was that the cause of his death was due to food poisoning while the second government physician NBI Medico Legal Officer Dr. Ronaldo Mendez whose findings was that the cause of the death was due to a traumatic injury of the abdomen caused by a lacerated spleen and with these findings of two (2) government physicians whose findings are at variance with each other materially, it is humbly contended that the same issue raised a reasonable doubt on the culpability of the petitioner.

As there are improbabilities and uncertainties of the evidence for the prosecution in the case at bar, it suffices to raise [sic] reasonable doubt as to the petitioner's guilt and therefore, he is entitled to acquittal (People vs. Delmendo, G.R. No. 32146, November 23, 1981).[19]

In this jurisdiction, an accused in a criminal case may only be convicted if his or her guilt is established by proof

beyond reasonable doubt. Proof beyond reasonable doubt requires only a moral certainty or that degree of proof which produces conviction in an unprejudiced mind; it does not demand absolute certainty and the exclusion of all possibility of error.[20]

In the Petition at bar, this Court finds that there is proof beyond reasonable doubt to hold petitioner Calimutan liable for the death of the victim Cantre.

Undoubtedly, the exhumation and autopsy report and the personal testimony before the RTC of prosecution witness, NBI Senior Medico-Legal Officer Dr. Mendez, are vital pieces of evidence against petitioner Calimutan. Dr. Mendez determined that the victim Cantre died of internal hemorrhage or bleeding due to the laceration of his spleen. In his testimony, Dr. Mendez clearly and consistently explained that the spleen could be lacerated or ruptured when the abdominal area was hit with a blunt object, such as the stone thrown by petitioner Calimutan at the victim Cantre.

It bears to emphasize that Dr. Mendez was presented by the prosecution as an expert witness, whose "competency and academic qualification and background" was admitted by the defense itself.[21] As a Senior Medico-Legal Officer of the NBI, Dr. Mendez is presumed to possess sufficient knowledge of pathology, surgery, gynecology, toxicology, and such other branches of medicine germane to the issues involved in a case.[22]

Dr. Mendez's testimony as an expert witness is evidence,[23]and although it does not necessarily bind the courts, both the RTC and the Court of Appeals had properly accorded it great weight and probative value. Having testified as to matters undeniably within his area of expertise, and having performed a thorough autopsy on the body of the victim Cantre, his findings as to the cause of death of the victim Cantre are more than just the mere speculations of an ordinary person. They may sufficiently establish the causal relationship between the stone thrown by the petitioner Calimutan and the lacerated spleen of the victim Cantre which, subsequently, resulted in the latter's death. With no apparent mistake or irregularity, whether in the manner by which Dr. Mendez performed the autopsy on the body of the victim Cantre or in his findings, then his report and testimony must be seriously considered by this Court.

Moreover, reference to other resource materials on abdominal injuries would also support the conclusion of Dr. Mendez that the stone thrown by petitioner Calimutan caused the death of the victim Cantre.

One source explains the nature of abdominal injuries[24] in the following manner –

The skin may remain unmarked inspite of extensive internal injuries with bleeding and disruption of the internal organs. The areas most vulnerable are the point of attachment of internal organs, especially at the source of its blood supply and at the point where blood vessels change direction.

The area in the middle superior half of the abdomen, forming a triangle bounded by the ribs on the two sides and a line drawn horizontally through the umbilicus forming its base is vulnerable to trauma applied from any direction. In this triangle are found several blood vessels changing direction, particularly the celiac trunk, its branches (the hepatic, splenic and gastric arteries) as well as the accompanying veins. The loop of the duodenum, the ligament of Treitz and the pancreas are in the retroperitoneal space, and the stomach and transverse colon are in the triangle, located in the peritoneal cavity. Compression or blow on the area may cause detachment, laceration, stretch-stress, contusion of the organs (Legal Medicine 1980, Cyril H. Wecht et., p. 41).

As to injuries to the spleen, in particular,[25] the same source expounds that –

The spleen usually suffers traumatic rupture resulting from the impact of a fall or blow from the crushing and grinding effects of wheels of motor vehicles. Although the organ is protected at its upper portion by the ribs and also by the air-containing visceral organs, yet on account of its superficiality and fragility, it is usually

affected by trauma. x x x.

Certainly, there are some terms in the above-quoted paragraphs difficult to comprehend for people without medical backgrounds. Nevertheless, there are some points that can be plainly derived therefrom: (1) Contrary to common perception, the abdominal area is more than just the waist area. The entire abdominal area is divided into different triangles, and the spleen is located in the upper triangle, bounded by the rib cage; (2) The spleen and all internal organs in the same triangle are vulnerable to trauma from all directions. Therefore, the stone need not hit the victim Cantre from the front. Even impact from a stone hitting the back of the victim Cantre, in the area of the afore-mentioned triangle, could rupture the spleen; and (3) Although the spleen had already been ruptured or lacerated, there may not always be a perceptible external injury to the victim. Injury to the spleen cannot, at all times, be attributed to an obvious, external injury such as a cut or bruise. The laceration of the victim Cantre's spleen can be caused by a stone thrown hard enough, which qualifies as a nonpenetrating trauma[26] –

Nonpenetrating Trauma. The spleen, alone or in combination with other viscera, is the most frequently injured organ following blunt trauma to the abdomen or the lower thoracic cage. Automobile accidents provide the predominating cause, while falls, sledding and bicycle injuries, and blows incurred during contact sports are frequently implicated in children. x x x

The sheer impact of the stone thrown by petitioner Calimutan at the back of the victim Cantre could rupture or lacerate the spleen – an organ described as vulnerable, superficial, and fragile – even without causing any other external physical injury. Accordingly, the findings of Dr. Mendez that the victim Cantre died of internal hemorrhage from his lacerated spleen, and the cause of the laceration of the spleen was the stone thrown by petitioner Calimutan at the back of the victim Cantre, does not necessarily contradict his testimony before the RTC that none of the external injuries of the victim Cantre were fatal.

Based on the foregoing discussion, the prosecution was able to establish that the proximate cause of the death of the victim Cantre was the stone thrown at him by petitioner Calimutan. Proximate cause has been defined as "that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred." [27]

The two other witnesses presented by the prosecution, namely Sañano and Belen Cantre, had adequately recounted the events that transpired on 04 February 1996 to 05 February 1996. Between the two of them, the said witnesses accounted for the whereabouts, actions, and physical condition of the victim Cantre during the said period. Before the encounter with petitioner Calimutan and Bulalacao, the victim Cantre seemed to be physically fine. However, after being hit at the back by the stone thrown at him by petitioner Calimutan, the victim Cantre had continuously complained of backache. Subsequently, his physical condition rapidly deteriorated, until finally, he died. Other than being stoned by petitioner Calimutan, there was no other instance when the victim Cantre may have been hit by another blunt instrument which could have caused the laceration of his spleen.

Hence, this Court is morally persuaded that the victim Cantre died from a lacerated spleen, an injury sustained after being hit by a stone thrown at him by petitioner Calimutan. Not even the post-mortem report of Dr. Ulanday, the Municipal Health Officer who first examined the body of the victim Cantre, can raise reasonable doubt as to the cause of death of the victim Cantre. Invoking Dr. Ulanday's post-mortem report, the defense insisted on the possibility that the victim Cantre died of food poisoning. The post-mortem report, though, cannot be given much weight and probative value for the following reasons –

First, a closer scrutiny of the words used by Dr. Ulanday in her post-mortem report, as well as in the death certificate of the victim Cantre, reveals that although she suspected food poisoning as the cause of death, she held back from making a categorical statement that it was so. In the post-mortem report, [28] she found that "x x x the

provable (sic) cause of death was due to cardio-respiratory arrest. Food poisoning must be confirm (sic) by laboratory e(x)am." In the death certificate of the victim Cantre, [29]she wrote that the immediate cause of death was "Cardio-Respiratory Arrest" and the antecedent cause was "Food Poisoning Suspect." There was no showing that further laboratory tests were indeed conducted to confirm Dr. Ulanday's suspicion that the victim Cantre suffered from food poisoning, and without such confirmation, her suspicion as to the cause of death remains just that – a suspicion.

Second, Dr. Ulanday executed before the NBI a sworn statement[30] in which she had explained her findings in the post-mortem report, to wit –

05. Q:

Did you conduct an autopsy on his cadaver?

A:

I did sir, but not as exhaustive as that done by the NBI Medico-legal.

06. Q:

Now, what do you want to state regarding your certification on the death of PHILIP B. CANTRE?

A:

I stated in the certification and even in the Death Certificate about "Food Poisoning". What I stated in the Death Certificate was that CANTRE was a SUSPECTED victim of food poisoning. I didn't state that he was a case of food poisoning. And in the Certification, I even recommended that an examination be done to confirm that suspicion.

07. Q:

What gave you that suspicion of poisoning?

A:

As there were no external signs of fatal injuries except that of the contusion or abrasion, measuring as that size of a 25 centavo coin, I based my suspicion from the history of the victim and from the police investigation.

08. Q:

You also mentioned in your Certification that there was no internal hemorrhage in the cadaver. Did you open the body of the cadaver?

A:

As I have already stated sir, I did not conduct an exhaustive autopsy. I made an incision on the abdomen and I explored the internal organs of the cadaver with my hand in search for any clotting inside. But I found none. I did not open the body of the cadaver.

09. Q:

You mentioned about a contusion you have observed on the cadaver. Where was it located?

A:

On the left portion of his back, sir.

10. Q:

Now, is it possible that if somebody be hit by a hard object on that part of his body, his SPLEEN could be injured?

A:

Yes, sir. But that would depend on how strong or forceful the impact was.

In contrast, Dr. Mendez described in his testimony before the RTC[31] how he conducted the autopsy of the body of the victim Cantre, as follows –

Q

What specific procedure did you do in connection with the exhumation of the body of the victim in this case?

A

We opened the head, chest and the abdomen.

Q

That was part of the autopsy you have conducted?

A

Yes, sir.

Q

Aside from opening the head as well as the body of the victim Philip Cantre, what other matters did you do in connection therewith?

A

We examined the internal organs.

Q

What in particular internal organs you have examined?

A

The brain, the heart, the lungs, the liver, the kidneys, the pancreas plus the intestines.

x x x x

Q

The cause of death as you have listed here in your findings is listed as traumatic injury of the abdomen, will you kindly tell us Doctor what is the significance of this medical term traumatic injury of the abdomen?

A

We, medico-legal officers of the NBI don't do what other doctors do as they make causes of death as internal hemorrhage we particularly point to the injury of the body like this particular case the injury was at the abdomen of the victim.

Q

Will you tell as Doctor what particular portion of the abdomen of the victim this traumatic injury is located?

A

Along the midline but the damaged organ was at the left.

Q

What particular organ are you referring to?

A

The spleen, sir.

The difference in the extent of the examinations conducted by the two doctors of the body of the victim Cantre provides an adequate explanation for their apparent inconsistent findings as to the cause of death. Comparing the limited autopsy conducted by Dr. Ulanday and her unconfirmed suspicion of food poisoning of the victim Cantre, as opposed to the exhaustive autopsy performed by Dr. Mendez and his definitive finding of a ruptured spleen as the cause of death of the victim Cantre, then the latter, without doubt, deserves to be given credence by the courts.

Third, that the prosecution no longer presented Dr. Ulanday before the RTC despite being included in its list of witnesses did not amount to a willful suppression of evidence that would give rise to the presumption that her testimony would be adverse to the prosecution if produced.[32] As this Court already expounded in the case of

People v. Jumamoy[[33]]–

The prosecution's failure to present the other witnesses listed in the information did not constitute, contrary to the contention of the accused, suppression of evidence. The prosecutor has the exclusive prerogative to determine the witnesses to be presented for the prosecution. If the prosecution has several eyewitnesses, as in the instant case, the prosecutor need not present all of them but only as many as may be needed to meet the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt. The testimonies of the other witnesses may, therefore, be dispensed with for being merely corroborative in nature. This Court has ruled that the non-presentation of corroborative witnesses would not constitute suppression of evidence and would not be fatal to the prosecution's case. Besides, there is no showing that the eyewitnesses who were not presented in court as witnesses were not available to the accused. We reiterate the rule that the adverse presumption from a suppression of evidence is not applicable when (1) the suppression is not willful; (2) the evidence suppressed or withheld is merely corroborative or cumulative; (3) the evidence is at the disposal of both parties; and (4) the suppression is an exercise of a privilege. Moreover, if the accused believed that the failure to present the other witnesses was because their testimonies would be unfavorable to the prosecution, he should have compelled their appearance, by compulsory process, to testify as his own witnesses or even as hostile witnesses.

It was a judgment call for the prosecution to no longer present Dr. Ulanday before the RTC, perhaps believing that it had already presented sufficient evidence to merit the conviction of petitioner Calimutan even without her testimony. There was nothing, however, preventing the defense from calling on, or even compelling, with the appropriate court processes, Dr. Ulanday to testify in court as its witness if it truly believed that her testimony would be adverse to the case presented by the prosecution

While this Court is in accord with the factual findings of the RTC and the Court of Appeals and affirms that there is ample evidence proving that the death of the victim Cantre was caused by his lacerated spleen, an injury which resulted from being hit by the stone thrown at him by petitioner Calimutan, this Court, nonetheless, is at variance with the RTC and the Court of Appeals as to the determination of the appropriate crime or offense for which the petitioner should have been convicted for.

Article 3 of the Revised Penal Code classifies felonies according to the means by which they are committed, in particular: (1) intentional felonies, and (2) culpable felonies. These two types of felonies are distinguished from each other by the existence or absence of malicious intent of the offender –

In intentional felonies, the act or omission of the offender is malicious. In the language of Art. 3, the act is performed with deliberate intent (with malice). The offender, in performing the act or in incurring the omission, has the intention to cause an injury to another. In culpable felonies, the act or omission of the offender is not malicious. The injury caused by the offender to another person is "unintentional, it being simply the incident of another act performed without malice." (People vs. Sara, 55 Phil. 939). As stated in Art. 3, the wrongful act results from imprudence, negligence, lack of foresight or lack of skill.[34]

In the Petition at bar, this Court cannot, in good conscience, attribute to petitioner Calimutan any malicious intent to injure, much less to kill, the victim Cantre; and in the absence of such intent, this Court cannot sustain the conviction of petitioner Calimutan for the intentional crime of homicide, as rendered by the RTC and affirmed by the Court of Appeals. Instead, this Court finds petitioner Calimutan guilty beyond reasonable doubt of the culpable felony of reckless imprudence resulting in homicide under Article 365 of the Revised Penal Code.

Article 365 of the Revised Penal Code expressly provides for the definition of reckless imprudence –

Reckless imprudence consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or

failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place.

There are several circumstances, discussed in the succeeding paragraphs, that demonstrate petitioner Calimutan's lack of intent to kill the victim Cantre, and conversely, that substantiate the view of this Court that the death of victim Cantre was a result of petitioner Calimutan's reckless imprudence. The RTC and the Court of Appeals may have failed to appreciate, or had completely overlooked, the significance of such circumstances.

It should be remembered that the meeting of the victim Cantre and witness Sañano, on the one hand, and petitioner Calimutan and his helper Bulalacao, on the other, was a chance encounter as the two parties were on their way to different destinations. The victim Cantre and witness Sañano were on their way home from a drinking spree in Crossing Capsay, while petitioner Calimutan and his helper Bulalacao were walking from the market to Crossing Capsay. While the evidence on record suggests that a running grudge existed between the victim Cantre and Bulalacao, it did not establish that there was likewise an existing animosity between the victim Cantre and petitioner Calimutan.

In both versions of the events of 04 February 1996 submitted by the prosecution and the defense, it was the victim Cantre who was the initial aggressor. He suddenly punched Bulalacao, the helper and companion of petitioner Calimutan, when they met on the road. The attack of the victim Cantre was swift and unprovoked, which spurred petitioner Calimutan into responsive action. Given that this Court dismisses the claim of petitioner Calimutan that the victim Cantre was holding a knife, it does take into account that the victim Cantre was considerably older and bigger, at 26 years of age and with a height of five feet and nine inches, compared to Bulalacao, the boy he attacked, who was only 15 years old and stood at about five feet. Even with his bare hands, the victim Cantre could have hurt Bulalacao. Petitioner Calimutan sought only to protect Bulalacao and to stop the assault of the victim Cantre against the latter when he picked up a stone and threw it at the victim Cantre. The stone was readily available as a weapon to petitioner Calimutan since the incident took place on a road. That he threw the stone at the back of the victim Cantre does not automatically imply treachery on the part of petitioner Calimutan as it is highly probable that in the midst of the fray, he threw the stone rashly and impulsively, with no regard as to the position of the victim Cantre. When the victim Cantre stopped his aggression after being hit by the stone thrown by petitioner Calimutan, the latter also desisted from any other act of violence against the victim Cantre.

The above-described incident could not have taken more than just a few minutes. It was a very brief scuffle, in which the parties involved would hardly have the time to ponder upon the most appropriate course of action to take. With this in mind, this Court cannot concur in the declaration made by the Court of Appeals that petitioner Calimutan threw the stone at the victim Cantre as a retaliatory act. It was evidently a swift and spontaneous reaction to an unexpected and unprovoked attack by the victim Cantre on Bulalacao. That Bulalacao was already able to run away from the victim Cantre may have escaped the notice of the petitioner Calimutan who, under the pressure of the circumstances, was forced to act as quickly as possible.

The prosecution did not establish that petitioner Calimutan threw the stone at the victim Cantre with the specific intent of killing, or at the very least, of harming the victim Cantre. What is obvious to this Court was petitioner Calimutan's intention to drive away the attacker who was, at that point, the victim Cantre, and to protect his helper Bulalacao who was, as earlier described, much younger and smaller in built than the victim Cantre.[35]

Granting that petitioner Calimutan was impelled by a lawful objective when he threw the stone at the victim Cantre, his act was committed with inexcusable lack of precaution. He failed to consider that a stone the size of a man's fist could inflict substantial injury on someone. He also miscalculated his own strength, perhaps unaware, or even completely disbelieving, that he could throw a stone with such force as to seriously injure, or worse, kill

someone, at a quite lengthy distance of ten meters.

Since it is irrefragable that the stone thrown by petitioner Calimutan at the victim Cantre was the proximate cause of the latter's death, despite being done with reckless imprudence rather than with malicious intent, petitioner Calimutan remains civilly liable for such death. This Court, therefore, retains the reward made by the RTC and the Court of Appeals to the heirs of the victim Cantre of the amount of P50,000.00 as civil indemnity for his death and another P50,000.00 as moral damages.

WHEREFORE, the assailed Decision of the Court of Appeals in CA-G.R. CR No. 23306, dated 29 August 2001, affirming the Decision of the RTC in Criminal Case No. 8184, dated 19 November 1998, is hereby MODIFIED. Petitioner Calimutan is found GUILTY beyond reasonable doubt of reckless imprudence resulting in homicide, under Article 365 of the Revised Penal Code, and is accordingly sentenced to imprisonment for a minimum period of 4 months of arresto mayor to a maximum period of two years and one day of prision correccional. Petitioner Calimutan is further ORDERED to pay the heirs of the victim Cantre the amount of P50,000.00 as civil indemnity for the latter's death and P50,000.00 as moral damages.

SO ORDERED.

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

[1] Penned by Associate Justice Perlita J. Tria Tirona with Associate Justices Eugenio S. Labitoria and Eloy R. Bello, Jr., concurring; Rollo, pp. 21-26.

[2] Penned by Judge Narciso G. Bravo, Id., pp. 27-31.

[3] RTC Records, p. 1.

[4] Id., p. 18.

[5] Order of Release, penned by Judge Designate Silvestre L. Aguirre, Id., p. 38.

[6] Bailbond, Id., pp. 32-35.

[7] Certificate of Arraignment, Id., p. 46.

[8] TSN, 15 January 1998, pp. 1-13.

[9] TSN, 16 January 1998, pp. 1-8.

[10] RTC records, p. 12.

[11] Id., p. 11.

[12] Id., pp. 13-14.

[13] TSN, 23 September 1997, pp. 1-16.

[14] TSN, 17 March 1998, pp. 1-18.

[15] Id.

[16] Rollo, pp. 30-31.

[17] Id., p. 25.

[18] Id., p. 35.

- [19] Id., p. 17.
- [20] REVISED RULES OF COURT, Rule 133, Section 2.
- [21] TSN, 23 September 1993, p. 2.
- [22] Pedro P. Solis, LEGAL MEDICINE, p. 2 (1987).
- [23] REVISED RULES OF COURT, Rule 130, Section 49.
- [24] Supra note 22, p. 317.
- [25] Id., p. 319.
- [26] II Seymour I. Schwartz, et al., PRINCIPLES OF SURGERY, p. 1377 (4th ed., 1984).
- [27] Vda. de Bataclan v. Medina, 102 Phil. 181, 186 (1957).
- [28] RTC records, p. 12.
- [29] Id., p. 11.
- [30] Id., p. 10.
- [31] TSN, 23 September 1997, pp. 5-9.
- [32] REVISED RULES OF COURT, Rule 131, Section 3(e).
- [33] G.R. No. 101584, 07 April 1993, 221 SCRA 333, 344-345.
- [34] I Luis B. Reyes, THE REVISED PENAL CODE, pp. 33-34 (13th Ed., 1993).
- [35] In the following cases, the accused were convicted of reckless imprudence resulting in homicide, rather than murder or homicide, for they were found to have acted without criminal intent: (1) The accused, a faith healer, who caused the death of a boy after she immersed the boy in a drum of water, banged the boy's head against a wooden bench, pounded the boy's chest with clenched fists, and stabbed the boy to collect his blood. The boy was allegedly possessed by an evil spirit which the accused was merely attempting to drive out (People v. Carmen, G.R. No. 137268, 26 March 2001, 355 SCRA 267); (2) The accused shot his gun at the ground to stop a fist fight, and when the bullet ricocheted, it hit and killed a bystander (People v. Nocum, 77 Phil. 1018 [1947]); (3) The accused carried a gun to shoot birds, when the victim attempted to wrest possession thereof. The gun went off, hitting and killing the victim (People v. Sara, 55 Phil 939 [1931]); and (4) While hunting, the accused shot at and killed what he thought was a prey, but who turned out to be one of his companions (People v. Ramirez, 48 Phil 204 [1926]).

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