

FIDEL V. AMARILLO, JR., PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND RAUL HERMO, RESPONDENTS.

G.R. NO. 153650. August 31, 2006

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QUISUMBING, J.:

For review on certiorari are the Decision[1] dated January 31, 2001, of the Court of Appeals, in CA-G.R. CR. No. 22071, and its Resolution[2] dated May 8, 2002, denying reconsideration. The impugned decision modified the judgment[3] dated March 31, 1998, of the Regional Trial Court (RTC) of Baler, Aurora, Branch 66 in Criminal Cases Nos. 1932 and 1933 and found petitioner Fidel V. Amarillo, Jr. guilty of frustrated homicide only.

The antecedent facts in this case are as follows:

On November 15, 1994, two separate informations docketed as Criminal Cases Nos. 1932 and 1933 were filed against petitioner Fidel V. Amarillo, Jr. The information in Criminal Case No. 1932 charged Amarillo with illegal possession of firearm and ammunition under Presidential Decree No. 1866,[4] committed as follows:

That on the 3[rd] day of September, 1994 at around 10:30 o'clock (sic) in the evening at the Amihan Hotel and Restaurant at the Poblacion, Municipality of Baler, Province of Aurora, Philippines, the said accused, did then and there, wilfully, unlawfully and feloniously carry and have in his possession and under his custody and control one (1) .38 caliber Smith and Wesson (Paltic) Revolver together with four (4) live ammunitions without first having secured the necessary license and permit to carry said firearm from the proper authorities.

CONTRARY TO LAW.[5]

The information in Criminal Case No. 1933 charged him with frustrated homicide, committed as follows:

That on the 3[rd] day of September, 1994, at around 10:30 o'clock (sic) in the evening at the Amihan Hotel and Restaurant at the Poblacion, Municipality of Baler, Province of Aurora, Philippines, the said accused, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one Raul Hermo, by then and there shooting the latter at his forehead with a .38 caliber revolver thereby inflicting upon him serious physical injuries, thus performing all the acts of execution which should have produced the crime of homicide as a consequence, but nevertheless did not produce it by reason of causes independent of his will, that is by the timely and able medical assistance rendered to said Raul Hermo which prevented his death.

CONTRARY TO LAW.[6]

Upon arraignment, Amarillo pleaded not guilty.[7] Thereafter, joint trial ensued.[8]

The prosecution and the defense differ in their versions of the events. The gist of the prosecution evidence is as follows:

On September 3, 1994, private respondent Raul Hermo, with his companions Herminio Ade, Leoncio Ade, Ricky Ramirez, Danilo Palmero, and Edgardo Soriano went to the Amihan Disco and Restaurant to celebrate Herminio Ade's birthday. At that time, the group of Amarillo, Joseph Alvin Bihasa, Ramses Barribal, and Bimbo Bernardo

was already there. Hermo's group occupied a table near them. The waitress switched on the stand fan near the table of Hermo's group and faced the fan towards them. However, Amarillo stood up and redirected the fan towards his group. Soriano told Barribal to just switch off the fan to be fair to all. Barribal obliged but Amarillo switched it on again. Thereafter, he shifted a gun tucked on the left side of his waist to the right side. Hermo approached and talked to Amarillo. Without any warning, Amarillo shot Hermo in the forehead causing him to fall. Hermo's group rushed towards Amarillo and wrestled the gun from him.

Amarillo's story is that he and his friends were already using the fan when Hermo's group arrived. Ramirez took it and directed it towards their group. When Amarillo felt hot, he pressed the fan's button to make it swivel. Thereafter, Ramirez started throwing peanuts at him. Bihasa approached Hermo's group but was pushed back to their table. When Amarillo stood up, Soriano pointed a gun at Amarillo. Amarillo parried the gun but it suddenly exploded. When he tried to see if anyone was hit, someone struck him in the head making him unconscious. Amarillo regained consciousness only inside the police vehicle enroute to the hospital.

After trial, the RTC resolved the case as follows:

WHEREFORE, premises considered, the Court

- In Criminal Case No. 1932 finds Fidel Amarillo, Jr. guilty beyond reasonable doubt of the crime of illegal possession of firearm and ammunition defined and penalized under P.D. 1866 as amended by R.A. 8294, and considering the presence of the mitigating circumstance of voluntary surrender without any aggravating circumstance to offset the same, hereby sentences him to suffer an indeterminate penalty of ten (10) years and one (1) day of prision mayor as minimum to seventeen (17) years and four (4) months and one (1) day of reclusion temporal as maximum with all the accessory penalties provided by law; and to pay the cost;

- In Criminal Case No. 1933, the Court likewise finds accused Fidel Amarillo, Jr. guilty beyond reasonable doubt of frustrated homicide and taking into consideration the mitigating circumstance of voluntary surrender, without any aggravating circumstance to offset the same, hereby sentences him to suffer an indeterminate penalty of four (4) years and two (2) months of prision correccional as minimum to eight (8) years of prision mayor as maximum with all the accessory penalties provided by law; to indemnify the offended party Raul S. Hermo the sum of P338,317.45 as civil indemnity; and to pay the costs.

In both cases, the accused shall be credited in the service of his sentence with the full time during which he has undergone preventive imprisonment, if he agreed voluntarily to abide by the same disciplinary rules imposed upon convicted prisoners; otherwise with four-fifths thereof.

SO ORDERED.[9]

Amarillo appealed to the Court of Appeals.[10] He faulted the trial court for (1) convicting him although the prosecution failed to prove his guilt beyond reasonable doubt of the crimes of frustrated homicide and illegal possession of firearm; and (2) acting with gross and manifest bias and partiality.

While the Court of Appeals agreed with the factual findings of the trial court, it concluded that Amarillo should have been convicted only of frustrated homicide in Criminal Case No. 1933 and the use of unlicensed firearm should have been considered as an aggravating circumstance only. However, such aggravating circumstance should be offset with the mitigating circumstance of voluntary surrender. The dispositive portion provides:

WHEREFORE, in the light of the foregoing, the Decision in Criminal Case No. 1933 for frustrated homicide is hereby MODIFIED to reflect that accused-appellant is hereby sentenced, pursuant to the Indeterminate Sentence Law and Section 1 of R.A. No. 8294 which amended P.D. No. 1866, and taking into consideration the mitigating circumstance of voluntary surrender, to suffer an indeterminate penalty of eight (8) years, eight (8) months and one (1) day of prision mayor as minimum to nine (9) years and four (4) months of prision

mayor as maximum. Said Decision in other respects not inconsistent herewith is AFFIRMED.

The Decision in Criminal Case No. 1932 for illegal possession of firearm and ammunition is SET ASIDE, and accused-appellant is ACQUITTED thereof.

SO ORDERED.[11]

Hence, the instant petition raising the following issues:

- WHETHER OR NOT THE JUDGE A QUO IS LEGALLY DISQUALIFIED TO HEAR THE CASE AGAINST THE ACCUSED.
- WHETHER OR NOT THE . . . PROCEEDINGS BEFORE THE JUDGE A QUO AMOUNTED TO A MISTRIAL RESULTING IN A GROSS MISCARRIAGE OF JUSTICE.
- WHETHER OR NOT PETITIONER'S BASIC CONSTITUTIONAL RIGHT ... TO A FAIR AND IMPARTIAL TRIBUNAL WAS VIOLATED.
- WHETHER OR NOT THE JUDGE A QUO ACTED WITH THE COLD NEUTRALITY OF AN IMPARTIAL JUDGE.
- WHETHER OR NOT THE JUDGE A QUO IS GUILTY OF GROSS IGNORANCE OF THE LAW.
- WHETHER OR NOT THE PROSECUTION PROVED THE GUILT OF PETITIONER BEYOND REASONABLE DOUBT.[12]

In the main, the issues boil down to (1) whether the judge a quo is disqualified under Section 1, Rule 137 of the Rules of Court to hear and decide the case after he has acted as counsel de oficio during Amarillo's arraignment; and (2) whether there is sufficient evidence to sustain Amarillo's conviction of frustrated homicide.

On the first issue, we find that the judge a quo is not disqualified to hear and decide the case. The rule on inhibition and disqualification of judges is laid down in Section 1, Rule 137 of the Rules of Court:

SECTION 1. Disqualification of judges. -- No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above. (Emphasis supplied.)

The rule contemplates two kinds of inhibition: compulsory and voluntary. In the first paragraph, compulsory disqualification conclusively assumes that a judge cannot actively or impartially sit on a case for the reasons therein stated. The second paragraph, concerning voluntary inhibition, leaves to the judge's discretion whether he should desist from sitting in a case for other just and valid reasons with only his conscience to guide him.[13]

The principle that approximates the situation in this case is the disqualification of a judge from sitting in any case in which he has been counsel. To be sure, the judge a quo was designated as Amarillo's counsel de oficio for purposes of arraignment.[14] However, we note that his participation was limited to appraising Amarillo of the consequences of his plea. Prior to and subsequent to the arraignment, Amarillo had a counsel de parte. Accordingly, there is no basis for the judge a quo to compulsorily inhibit himself.

Although Amarillo repeatedly imputed charges of bias and partiality against the judge a quo, we do not find the

alluded acts or omissions as tantamount to partiality as to cause him grave injustice. First, the judge a quo's failure to consider the illegal possession of firearm as a mere aggravating circumstance to the crime of frustrated homicide pertains to erroneous application of the law. Second, while the appellate court found in CA-G.R. SP No. 47647[15] that the judge a quo committed grave abuse of discretion in canceling Amarillo's bail pending appeal, it did not rule on the judge a quo's alleged bias and partiality. Third, the judge a quo's order of commitment to the National Penitentiary after the appellate court rendered its decision was made under the belief that Amarillo did not move for reconsideration. Immediately upon learning that a motion for reconsideration was filed, the judge a quo did not implement his order.[16] It may be that these acts or omissions are against Amarillo's interest; yet, we do not find them sufficient to warrant the conclusion that the judge a quo was biased against him.

The second and more substantial question is whether there is sufficient evidence to sustain Amarillo's conviction of frustrated homicide. After a close scrutiny of the records, we are convinced that he was correctly convicted of frustrated homicide. As clearly observed by the trial court, which was evidently in the best position to weigh and evaluate the evidence:

... Witnesses Ramirez, Ade, Soriano and victim himself Raul Hermo, could not have been mistaken in identifying accused as the one who shot Hermo on the forehead. It was crystal clear that they had a clear view of accused being only a mere 3 to 5 meters far from the accused. They could not have committed a mistake as they knew accused even before the incident and there is no plausible reason why these witnesses should lie under oath and implicate the accused. If they testified as they did, the explanation could only be that they really saw accused fired at Hermo. The denial of accused that it was not he but Eduardo Soriano who shot Hermo cannot prevail over his positive identification by said witnesses more importantly by victim Hermo himself, whom accused had not shown any improper motive which could have impelled him to testify against or implicate accused in the commission of the crime. The absence of evidence as to an improper motive strongly tends to sustain the conclusion that none existed and that the testimony is worthy of full faith and credit. For indeed, if an accused had nothing to do with the crime, it would be against the natural order of events and of human nature and against the presumption of good faith for a prosecution witness to falsely testify against the accused (People vs. Palili, 92 SCRA 552).....[17]

Amarillo tried to capitalize on the supposed bias and inconsistencies of the prosecution witnesses. But as correctly observed by both the trial court and the appellate court, the mere relationship of the victim to the witnesses does not automatically impair the credibility of the witnesses where no improper motive can be ascribed to them.[18] Further, discrepancies on minor matters, i.e., which hand Amarillo used in firing the gun and how many bottles of beer Hermo's group consumed, do not impair the essential integrity of the prosecution evidence; rather, these tend to strengthen the testimonies because these erase any suspicion of rehearsed testimony. What is important is that the testimonies agree on the essential facts and that the respective versions corroborate and substantially coincide with each other to make a consistent and coherent whole.[19]

More importantly, it must be emphasized that the testimonial disparities do not negate the fact that Amarillo was positively identified by the prosecution witnesses as the malefactor. There is no contrariety with regard to this vital fact. Amarillo's denial cannot prevail over the positive identification by credible witnesses.[20] The unbending jurisprudence is that the trial court's findings on the matter of credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any showing that it had overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case.[21]

The prosecution evidence has proved beyond reasonable doubt that Amarillo indeed committed the crime of frustrated homicide as charged.

WHEREFORE, there being no reversible error in the decision dated January 31, 2001, and the resolution dated

May 8, 2002, of the Court of Appeals, in CA-G.R. CR. No. 22071 modifying the judgment dated March 31, 1998, of the Regional Trial Court of Baler, Aurora, Branch 66 in Criminal Cases Nos. 1932 and 1933, the said decision and resolution are AFFIRMED, and the instant petition is DENIED.

SO ORDERED.

Carpio, Carpio Morales, Tinga and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 44-65. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices B.A. Adefuin-De La Cruz, and Rebecca De Guia-Salvador concurring.

[2] Id. at 67-74.

[3] Records, Vol. I, pp. 448-461.

[4] CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION, OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES. (JUNE 29, 1983)

[5] Records, Vol. I, pp. 1-2.

[6] Records, Vol. II, pp. 1-2.

[7] Records, Vol. I, p. 37; Records, Vol. II, p. 21.

[8] Id. at 56; Id. at 27.

[9] Records, Vol. I, pp. 460-461.

[10] CA rollo, pp. 54-103.

[11] Rollo, p. 64.

[12] Id. at 248.

[13] Chin v. Court of Appeals, G.R. No. 144618, August 15, 2003, 409 SCRA 206, 212.

[14] Records, Vol. I, p. 35; Records, Vol. II, p. 20.

[15] CA rollo, pp. 120-127.

[16] Id. at 277-278.

[17] Records, Vol. I, p. 458.

[18] Id.; CA rollo, p. 220.

[19] Records, Vol. I, p. 459; Id. at 221-222, 226.

[20] People v. Marquez, G.R. Nos. 138972-73, September 13, 2001, 365 SCRA 200, 217; See People v. Marquez, G.R. No. 136736, April 11, 2002, 380 SCRA 561, 581.

[21] Arceño v. People, G.R. No. 116098, April 26, 1996, 256 SCRA 569, 579-580; See People v. Velasco, G.R. No. 125016, May 28, 1999, 307 SCRA 684, 698; People v. Palomar, G.R. Nos. 108183-85, August 21, 1997, 278

SCRA 114, 118.

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