JULITO OPERIANO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 156521. April 26, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari is the Decision[1] dated July 5, 2002 of the Court of Appeals in CA-G.R. CR No. 21547, which affirmed the decision[2] of Regional Trial Court of Bohol convicting petitioner Julito Operiano of homicide. Also assailed is the appellate court's Resolution[3] dated November 15, 2002, denying the motion for reconsideration.

Petitioner Julito Operiano and his father, Justino Operiano, were charged with homicide under an Information which reads:

> That, on or about the 8[th] day of December, 1995, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping with one another with force and violence and without any justifiable cause, did then and there willfully, unlawfully and feloniously, with the intent to kill, attack, assault and box one Alberto Penales, thereby inflicting upon him SEVERE HEAD INJURIES, which injuries directly caused his death, to the damage and prejudice of his heirs, in the amount to be proved during the trial of the case.
>
> Acts committed contrary to the provisions of Article 249 of the Revised Penal Code.[4]

On arraignment, both father and son pleaded not guilty.

Both the trial court and the appellate court agree on the following factual findings:

At 7:30 p.m. of December 8, 1995, eyewitness Felix Olmillo, Jr. and his wife were waiting for a tricycle at Marapao Street corner Torralba Street, Tagbilaran City.[5] Felix, Jr. saw Justino Operiano punch the victim Alberto Penales on the face and then petitioner kick him on the abdomen.[6] Alberto fell, such that the back of his head hit the asphalt road.[7]

Another eyewitness, Alberto's brother, Fortunato Penales, Jr., corroborated Felix's testimony.[8] Fortunato, Jr. testified that he saw petitioner and his father immediately left on board their Ford Fierra.[9] The witness Fortunato, Jr. said he brought Alberto to the provincial hospital.[10]

Dr. Rolando Po[11] of Celestino Gallares Memorial Hospital, the Bohol provincial hospital, testified as per his medical finding that Alberto suffered "linear fracture occipital bone left"[12] or "fracture at the back of the head."[13] Alberto was discharged from the hospital on December 16, 1995.[14]

Two days later, Alberto was re-admitted to the same hospital. At 1:30 a.m., December 19, 1995, his condition worsened. Dr. Rosali Ray Atup[15] testified that Alberto was in "distress". Despite efforts to decrease the swelling of his brain,[16] Alberto died at 3:20 a.m.[17] The immediate cause was "CP Arrest secondary to uncal

herniation", which means that the heart and lungs stopped functioning.[18] The antecedent cause was "intracranial hemorrhage". The underlying cause was the head injury.[19]

For his defense, petitioner testified that a person unknown to him, carried and left the drunken Alberto near their passenger vehicle.[20] The back of Alberto's head had hit the cemented road.[21] Moments later, Alberto got up and started clawing Justino.[22] When he told Alberto to stop, Alberto turned against him.[23] Irritated, he kicked Alberto's left leg.[24] Petitioner added that they left because some of their passengers had started to alight.[25]

On July 21, 1997, the trial court convicted Julito Operiano and Justino Operiano. The decretal portion of its decision reads:

> WHEREFORE, in Criminal Case No. 9571, the Court finds accused Justino Operiano and Julito Operiano, guilty beyond reasonable doubt of the crime of Homicide, defined and penalized under Article 249 of the Revised Penal Code, as embraced in the aforequoted information. Appreciating in favor of the accused the mitigating circumstance of lack of intent to commit so grave a wrong, the said circumstance not having been offset by any aggravating circumstance adduced and proven during the trial, and applying the Indeterminate Sentence Law, the Court hereby sentences both accused to suffer the indeterminate penalty of imprisonment from SIX (6) YEARS and ONE (1) DAY of Prision Mayor, as minimum, to TEN (10) YEARS of Prision Mayor, as maximum, with the accessory penalties of the law, to indemnify the heirs of the victim, damages in the sum of P50,000.00; funeral expenses in the amount of P20,000.00; attorney's fees in the sum of P10,000.00 and to pay the costs.
>
> The accused are hereby credited in full of the period of their preventive imprisonment in accordance with Article 29 of the Revised Penal Code, as amended.
>
> SO ORDERED.[26]

Petitioner and his father appealed. The Court of Appeals affirmed petitioner's conviction but modified the maximum penalty of imprisonment imposed by the trial court. The appellate court found that petitioner's father was guilty of slight physical injuries only. The dispositive portion of the decision reads:

> IN VIEW WHEREOF, the Court affirms the appealed decision with modifications. Accused-appellant Julito Operiano is found guilty of the crime of Homicide and is sentenced, after appreciating in his favor the mitigating circumstance of lack of intent to commit so grave a wrong and applying the Indeterminate Sentence Law, to suffer the indeterminate penalty of SIX (6) YEARS and ONE (1) DAY OF PRISION MAYOR, as minimum, to TWELVE (12) YEARS and ONE (1) DAY of reclusion temporal, as maximum, with the accessory penalties of the law. He is further ordered to indemnify the heirs of the deceased Alberto Penales the sum of P50,000.00, funeral expenses in the amount of P3,180.00, attorney's fees of P10,000.00 and the costs.
>
> Accused-appellant Justino Operiano is found guilty of the crime of Slight Physical Injuries and is sentenced to pay a fine of P200.00.
>
> **SO ORDERED.[27]**

After the appellate court denied his motion for reconsideration on November 15, 2002, petitioner Julito Operiano filed the instant petition, raising the following issues:

> I
>
> WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S DECISION THAT THE KICK DELIVERED BY PETITIONER WAS THE PROXIMATE CAUSE OF THE DEATH OF THE VICTIM ALBERTO PENALES AND IN AFFIRMING THE CONVICTION OF PETITIONER FOR HOMICIDE.

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II

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FAILING TO CONSIDER AND APPRECIATE, AS THE TRIAL COURT LIKEWISE FAILED TO CONSIDER AND APPRECIATE, THE EVIDENCE OF EVENTS THAT OCCURRED PRIOR TO THE CONFRONTATION BETWEEN VICTIM ALBERTO PENALES AND JUSTINO OPERIANO.

III

WHETHER OR NOT APPELLATE COURTS CAN OVERTURN THE FINDINGS OF FACT BY A TRIAL OR LOWER COURT.[28]

Simply put, the issues submitted for resolution are: (1) Did the trial and appellate courts err in ruling that petitioner's kick was the proximate cause of Alberto's death? (2) Did they err in their appreciation of the events prior to the confrontation between petitioner and Alberto' (3) Did they err in convicting petitioner of homicide?

Petitioner asks us to overturn the factual findings of the trial and appellate courts for alleged misapprehension of the evidence. He contends that there is no evidence proving beyond reasonable doubt his culpability for Alberto's head injury and subsequent death. He insists that Alberto already suffered physical injuries before clawing Justino, but the trial court disregarded the testimonies of defense witnesses. Petitioner further contends that the testimonies of Felix and Fortunato lack credibility.

The Office of the Solicitor General counters that no compelling reason has been shown by petitioner to disturb the factual findings of the trial and appellate courts that it was petitioner who inflicted Alberto's fatal head injury.

Petitioner's arguments raise issues on factual matters, thereby entailing a review of the credibility of witnesses and their testimonies. However, these matters are improper in a petition for review under Rule 45 of the Rules of Court. As a rule, only questions of law should be raised in a petition for review under Rule 45.[29] Findings of fact of the Court of Appeals affirming those of the trial court bind this Court, unless the findings of the trial and appellate courts are palpably unsupported by the evidence on record or unless the judgment itself is based on misapprehension of facts.[30]

Besides, petitioner himself admitted that he kicked Alberto when he lost his patience after Alberto clawed him also. Petitioner's father and Johnny Cemini,[31] a defense witness, also testified that petitioner kicked Alberto. That petitioner's kick was the proximate and immediate cause of Alberto's head injury, causing his death is beyond cavil. The kicking of the victim by petitioner is the first and immediate act that produced the injury and set the other events in motion, each having a close causal connection with its immediate predecessor,[32] in a continuous chain of events leading to Alberto's death.

Felix's and Fortunato's eyewitness accounts corroborated each other's testimonies. The transcript of stenographic notes are instructive, to wit:

[Felix's testimony]

Q Now, after you saw Tino Operiano boxed and hitting the right face of the person of Alberto Penales, what happened next?
A Julito Operiano also used his right foot and [and] made a front kick at Alberto.

Q In Judo or martial arts terminology, how do you call that?
A Flying kick.

x x x x

Q Where, in what part of the body of Alberto Penales was hit by the flying kick of Julito Operiano?
A In front of his body.

x x x x

COURT:
The proper term should be . . .in the abdominal region. Proceed.

ATTY. MARAPAO:

Q After Alberto Penales was hit in the abdom[i]nal region - what happened to Alberto Penales?
A He fell down.

Q What was the position of Alberto Penales when he fell?
A When he fell down he was facing upwards.

Q And did a part of the body of Alberto Penales hit the road?
A Yes, sir.

Q This Marapao street what is the terrain?
A It is an asphalt road.

Q What portion of his body - hit the asphalt road? "
A The back of his head.[33]

[Fortunato's testimony]

Q Now, after your brother Alberto Penales was hit on the right eye by the right fist of Tino Operiano what happened next?
A His son, Julie Operiano made a flying kick.

Q To whom was the flying kick of Julie Operiano directed?
A The flying kick was directed towards above the abdomen.

Q Of whom, mention the name?
A My brother, Alberto Penales.

x x x x

Q Now, when your brother was hit at the upper portion of his abdomen by the flying kick " what happened next?
A Alberto fell down and his head hit on the street.

Q What part or portion of his head hit the street?
A Back of his head.[34]

On cross-examination by defense counsel as well as by the trial judge, Felix and Fortunato remained steadfast in their testimonies.

The eyewitness testimonies of Felix and Alberto's brother, Fortunato, conclusively support the finding that petitioner's kick caused Alberto to fall and hit the back of his head on the asphalt road. This is validated by the medico-legal certificate which identified Alberto's injury as "linear fracture occipital bone left' or "fracture at the back of the head." Beyond a shadow of doubt, Alberto's head injury was the underlying cause of his death 11 days later. Alberto's death certificate reads:

CAUSES OF DEATH

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Immediate cause: a. CP Arrest 2[o] to Uncal Herniation
Antecedent cause: b. Intracranial Hemorrhage Chronic
Underlying cause: c. Head Injury[35]

On the witness stand, Dr. Rosali Ray Atup, the attending physician of Alberto at the provincial hospital, ably presented his medical findings. No contradictory evidence has been presented to overturn his medical conclusions in this case.

Moreover, the defense presentation of its case contains gaps and inconsistencies. For instance, defense witness Ben Cantina[36] testified that it was Oming Olmillo who punched Alberto. Ben Cantina came to know Oming Olmillo's name three days after the December 8, 1995 incident,[37] yet Ben did not identify Oming in his January 9, 1996 affidavit.[38] Defense witness Calixta Miculob declared that Alberto was carried by two persons before he was dropped.[39] But for their part, petitioner, his father and Johnny Cemini testified that it was a friend of Oming Olmillo who carried Alberto.[40] Johnny Cemini also testified that Alberto was dropped off,[41] but merely stated in his affidavit[42] that Alberto was only placed near Justino's vehicle.

Lastly, we agree with the trial and appellate courts that the circumstance of having no intention to commit so grave a wrong serves to mitigate Julito's liability.[43] Thus, the appellate court did not err in modifying petitioner's sentence and civil liabilities.

WHEREFORE, the petition is DENIED for lack of merit. The Court of Appeals' Decision dated July 5, 2002 and its Resolution dated November 15, 2002 in CA-G.R. CR No. 21547 are AFFIRMED.

SO ORDERED.

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

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[1] Rollo, pp. 63-76. Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Martin S. Villarama, Jr., and Rebecca De Guia-Salvador concurring.

[2] Id. at 22-31.

[3] Id. at 92.

[4] CA Rollo, p. 30.

[5] TSN, August 29, 1996, pp. 15-16.

[6] Id. at 17-19.

[7] Rollo, pp. 23, 64; TSN, August 29, 1996, pp. 19-20.

[8] TSN, September 24, 1996, pp. 10-13.

[9] Id. at 14.

[10] Rollo, pp. 23, 65; TSN, September 24, 1996, pp. 6, 8-14.

[11] Also referred to as "Go" in other parts of the records.

[12] Exhibit "C", records, p. 3; Rollo, pp. 23, 66.

[13] TSN, September 23, 1996, p. 5.

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[14] Id. at 8.

[15] Also referred to as "Dr. Rosali Rey Atup" in other parts of the records.

[16] TSN, September 23, 1996, pp. 15-16 (Dr. Rosali Rey Atup).

[17] Exhibit "D", records, p. 4.

[18] TSN, September 23, 1996, pp. 10-17 (Dr. Rosali Rey Atup); Rollo, p. 66.

[19] Exhibit "D", records, p. 4; Rollo, p. 24.

[20] TSN, November 14, 1996, p. 5.

[21] Id. at 6.

[22] Id. at 7.

[23] Id.

[24] Id.

[25] Id. at 8.

[26] Id. at 30-31.

[27] Id. at 75.

[28] Id. at 153.

[29] Rule 45, Section 1.

[30] Pangonorom v. People, G.R. No. 143380, April 11, 2005, 455 SCRA 211, 220.

[31] Cimini, Cemine, Cimene in other parts of the record.

[32] Quinto v. Andres, G.R. No. 155791, March 16, 2005, 453 SCRA 511, 520.

[33] TSN, August 29, 1996, 18-20.

[34] TSN, September 24, 1996, pp. 10-13.

[35] Exhibit "D", records, p. 4.

[36] Cantena in other parts of the record.

[37] TSN, October 1, 1996, pp. 24-25.

[38] Exhibit "G", records, p. 9; Exhibit "1-translation", records, p. 14.

[39] TSN, October 2, 1996, pp. 8-9.

[40] TSN, March 25, 1997, p. 9; TSN, November 12, 1996, p. 8.

[41] TSN, November 12, 1996, p. 12.

[42] Exhibit "H", records, p. 10; "Exhibit 3-translation", records, p. 17.

[43] Revised Penal Code, ART. 13, par. 3.

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