

ALFREDO P. PACIS AND CLEOPATRA D. PACIS, PETITIONERS, VS. JEROME JOVANNE MORALES, RESPONDENT.

G.R. No. 169467. February 25, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for review[1] assails the 11 May 2005 Decision[2] and the 19 August 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 60669.

The Facts

On 17 January 1995, petitioners Alfredo P. Pacis and Cleopatra D. Pacis (petitioners) filed with the trial court a civil case for damages against respondent Jerome Jovanne Morales (respondent). Petitioners are the parents of Alfred Dennis Pacis, Jr. (Alfred), a 17-year old student who died in a shooting incident inside the Top Gun Firearms and Ammunitions Store (gun store) in Baguio City. Respondent is the owner of the gun store.

The facts as found by the trial court are as follows:

On January 19, 1991, Alfred Dennis Pacis, then 17 years old and a first year student at the Baguio Colleges Foundation taking up BS Computer Science, died due to a gunshot wound in the head which he sustained while he was at the Top Gun Firearm[s] and Ammunition[s] Store located at Upper Mabini Street, Baguio City. The gun store was owned and operated by defendant Jerome Jovanne Morales.

With Alfred Pacis at the time of the shooting were Aristedes Matibag and Jason Herbolario. They were sales agents of the defendant, and at that particular time, the caretakers of the gun store.

The bullet which killed Alfred Dennis Pacis was fired from a gun brought in by a customer of the gun store for repair.

The gun, an AMT Automag II Cal. 22 Rimfire Magnum with Serial No. SN-H34194 (Exhibit "Q"), was left by defendant Morales in a drawer of a table located inside the gun store.

Defendant Morales was in Manila at the time. His employee Armando Jarnague, who was the regular caretaker of the gun store was also not around. He left earlier and requested sales agents Matibag and Herbolario to look after the gun store while he and defendant Morales were away. Jarnague entrusted to Matibag and Herbolario a bunch of keys used in the gun store which included the key to the drawer where the fatal gun was kept.

It appears that Matibag and Herbolario later brought out the gun from the drawer and placed it on top of the table. Attracted by the sight of the gun, the young Alfred Dennis Pacis got hold of the same. Matibag asked Alfred Dennis Pacis to return the gun. The latter followed and handed the gun to Matibag. It went off, the bullet hitting the young Alfred in the head.

A criminal case for homicide was filed against Matibag before branch VII of this Court. Matibag, however,

was acquitted of the charge against him because of the exempting circumstance of "accident" under Art. 12, par. 4 of the Revised Penal Code.

By agreement of the parties, the evidence adduced in the criminal case for homicide against Matibag was reproduced and adopted by them as part of their evidence in the instant case.[3]

On 8 April 1998, the trial court rendered its decision in favor of petitioners. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs [Spouses Alfredo P. Pacis and Cleopatra D. Pacis] and against the defendant [Jerome Jovanne Morales] ordering the defendant to pay plaintiffs --

- (1) P30,000.00 as indemnity for the death of Alfred Pacis;
- (2) P29,437.65 as actual damages for the hospitalization and burial expenses incurred by the plaintiffs;
- (3) P100,000.00 as compensatory damages;
- (4) P100,000.00 as moral damages;
- (5) P50,000.00 as attorney's fees.

SO ORDERED.[4]

Respondent appealed to the Court of Appeals. In its Decision[5] dated 11 May 2005, the Court of Appeals reversed the trial court's Decision and absolved respondent from civil liability under Article 2180 of the Civil Code.[6]

Petitioners filed a motion for reconsideration, which the Court of Appeals denied in its Resolution dated 19 August 2005.

Hence, this petition.

The Trial Court's Ruling

The trial court held respondent civilly liable for the death of Alfred under Article 2180 in relation to Article 2176 of the Civil Code.[7] The trial court held that the accidental shooting of Alfred which caused his death was partly due to the negligence of respondent's employee Aristedes Matibag (Matibag). Matibag and Jason Herbolario (Herbolario) were employees of respondent even if they were only paid on a commission basis. Under the Civil Code, respondent is liable for the damages caused by Matibag on the occasion of the performance of his duties, unless respondent proved that he observed the diligence of a good father of a family to prevent the damage. The trial court held that respondent failed to observe the required diligence when he left the key to the drawer containing the loaded defective gun without instructing his employees to be careful in handling the loaded gun.

The Court of Appeals' Ruling

The Court of Appeals held that respondent cannot be held civilly liable since there was no employer-employee relationship between respondent and Matibag. The Court of Appeals found that Matibag was not under the control of respondent with respect to the means and methods in the performance of his work. There can be no employer-employee relationship where the element of control is absent. Thus, Article 2180 of the Civil Code does not apply in this case and respondent cannot be held liable.

Furthermore, the Court of Appeals ruled that even if respondent is considered an employer of Matibag, still respondent cannot be held liable since no negligence can be attributed to him. As explained by the Court of Appeals:

Granting arguendo that an employer-employee relationship existed between Aristedes Matibag and the defendant-appellant, we find that no negligence can be attributed to him.

Negligence is best exemplified in the case of *Picart vs. Smith* (37 Phil. 809). The test of negligence is this:

"x x x. Could a prudent man, in the position of the person to whom negligence is attributed, foresee harm to the person injured as a reasonable consequence of the course about to be pursued? If so, the law imposes a duty on the actor to refrain from that course or take precaution against its mischievous results, and the failure to do so constitutes negligence. x x x."

Defendant-appellant maintains that he is not guilty of negligence and lack of due care as he did not fail to observe the diligence of a good father of a family. He submits that he kept the firearm in one of his table drawers, which he locked and such is already an indication that he took the necessary diligence and care that the said gun would not be accessible to anyone. He puts [sic] that his store is engaged in selling firearms and ammunitions. Such items which are per se dangerous are kept in a place which is properly secured in order that the persons coming into the gun store would not be able to take hold of it unless it is done intentionally, such as when a customer is interested to purchase any of the firearms, ammunitions and other related items, in which case, he may be allowed to handle the same.

We agree. Much as We sympathize with the family of the deceased, defendant-appellant is not to be blamed. He exercised due diligence in keeping his loaded gun while he was on a business trip in Manila. He placed it inside the drawer and locked it. It was taken away without his knowledge and authority. Whatever happened to the deceased was purely accidental.[8]

The Issues

Petitioners raise the following issues:

- THE APPELLATE COURT COMMITTED SERIOUS ERROR IN RENDERING THE DECISION AND RESOLUTION IN QUESTION IN DISREGARD OF LAW AND JURISPRUDENCE BY REVERSING THE ORDER OF THE REGIONAL TRIAL COURT (BRANCH 59) OF BAGUIO CITY NOTWITHSTANDING CLEAR, AUTHENTIC RECORDS AND TESTIMONIES PRESENTED DURING THE TRIAL WHICH NEGATE AND CONTRADICT ITS FINDINGS.
- THE APPELLATE COURT COMMITTED GRAVE, REVERSIBLE ERROR IN RENDERING THE DECISION AND RESOLUTION IN QUESTION BY DEPARTING FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS THEREBY IGNORING THE FACTUAL FINDINGS OF THE REGIONAL TRIAL COURT (BRANCH 59) OF BAGUIO CITY SHOWING PETITIONER'S CLEAR RIGHTS TO THE AWARD OF DAMAGES.[9]

The Ruling of the Court

We find the petition meritorious.

This case for damages arose out of the accidental shooting of petitioners' son. Under Article 1161[10] of the Civil Code, petitioners may enforce their claim for damages based on the civil liability arising from the crime under Article 100[11] of the Revised Penal Code or they may opt to file an independent civil action for damages under the Civil Code. In this case, instead of enforcing their claim for damages in the homicide case filed against Matibag, petitioners opted to file an independent civil action for damages against respondent whom they alleged was Matibag's employer. Petitioners based their claim for damages under Articles 2176 and 2180 of the Civil Code.

Unlike the subsidiary liability of the employer under Article 103[12] of the Revised Penal Code,[13] the liability of the employer, or any person for that matter, under Article 2176 of the Civil Code is primary and direct, based on a person's own negligence. Article 2176 states:

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called quasi-delict and is governed by the provisions of this Chapter.

This case involves the accidental discharge of a firearm inside a gun store. Under PNP Circular No. 9, entitled the "Policy on Firearms and Ammunition Dealership/Repair," a person who is in the business of purchasing and selling of firearms and ammunition must maintain basic security and safety requirements of a gun dealer, otherwise his License to Operate Dealership will be suspended or canceled.[14]

Indeed, a higher degree of care is required of someone who has in his possession or under his control an instrumentality extremely dangerous in character, such as dangerous weapons or substances. Such person in possession or control of dangerous instrumentalities has the duty to take exceptional precautions to prevent any injury being done thereby.[15] Unlike the ordinary affairs of life or business which involve little or no risk, a business dealing with dangerous weapons requires the exercise of a higher degree of care.

As a gun store owner, respondent is presumed to be knowledgeable about firearms safety and should have known never to keep a loaded weapon in his store to avoid unreasonable risk of harm or injury to others. Respondent has the duty to ensure that all the guns in his store are not loaded. Firearms should be stored unloaded and separate from ammunition when the firearms are not needed for ready-access defensive use.[16] With more reason, guns accepted by the store for repair should not be loaded precisely because they are defective and may cause an accidental discharge such as what happened in this case. Respondent was clearly negligent when he accepted the gun for repair and placed it inside the drawer without ensuring first that it was not loaded. In the first place, the defective gun should have been stored in a vault. Before accepting the defective gun for repair, respondent should have made sure that it was not loaded to prevent any untoward accident. Indeed, respondent should never accept a firearm from another person, until the cylinder or action is open and he has personally checked that the weapon is completely unloaded.[17] For failing to insure that the gun was not loaded, respondent himself was negligent. Furthermore, it was not shown in this case whether respondent had a License to Repair which authorizes him to repair defective firearms to restore its original composition or enhance or upgrade firearms.[18]

Clearly, respondent did not exercise the degree of care and diligence required of a good father of a family, much less the degree of care required of someone dealing with dangerous weapons, as would exempt him from liability in this case.

WHEREFORE, we GRANT the petition. We SET ASIDE the 11 May 2005 Decision and the 19 August 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 60669. We REINSTATE the trial court's Decision dated 8 April 1998.

SO ORDERED.

Brion, Del Castillo, Abad, and Perez, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Jose Catral Mendoza (now Supreme Court Justice) with Associate Justices Romeo A. Brawner and Edgardo P. Cruz, concurring.

[3] Rollo, pp. 43-44.

[4] Id. at 50.

[5] Id. at 29-39.

[6] The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, the April 8, 1998 Decision of the Regional Trial Court, Branch 59, Baguio City, is REVERSED and SET ASIDE and a new one entered dismissing the defendant-appellant from civil liability under Article 2180 of the Civil Code.

SO ORDERED.

[7] Articles 2176 and 2180 of the Civil Code provide:

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called quasi-delict and is governed by the provisions of this Chapter.

Art. 2180. The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also of those persons for whom one is responsible.

x x x

The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

x x x

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

[8] Rollo, pp. 38-39.

[9] Id. at 15.

[10] Article 1161 of the Civil Code provides: "Civil obligations arising from criminal offenses shall be governed by the penal laws, subject to the provisions of Article 2177, and of the pertinent provisions of Chapter 2, Preliminary Title, on Human Relations, and Title XVIII of this Book regulating damages."

[11] Article 100 of the Revised Penal Code provides that "[e]very person criminally liable for a felony is also civilly liable."

[12] Article 103 of the Revised Penal Code states that "[t]he subsidiary liability in the next preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties."

[13] *Maniago v. Court of Appeals*, 324 Phil. 34 (1996).

[14] See PNP Circular No. 9, Policy on Firearms and Ammunition Dealership/Repair, <http://www.fed.org.ph/fed/download/PNP_Circulars/PNP_Circular_No._9.pdf> (visited 18 February 2010). The pertinent provision of the PNP Circular No. 9 reads:

Administrative Sanction

a. There shall be an Administrative Sanction of suspension or cancellation of license depending on the gravity and nature of the offense on the following prohibited acts:

- 1) Selling of ammunition to unauthorized persons, entities, security agencies, etc.
- 2) Selling of display firearm without authority.
- 3) Failure to maintain the basic security and safety requirements of a gun dealer and gun repair shop such as vault, fire fighting equipment and maintenance of security guards from a licensed security agency.
- 4) Failure to submit monthly sales report on time to FED, CSG [Firearms and Explosives Division of the PNP Civil Security Group].
- 5) Unauthorized disposition or selling of firearms intended for demonstration/test/evaluation and display during gun show purposes.
- 6) Submission of spurious documents in the application for licenses.
- 7) Other similar offenses. (Emphasis supplied)

[15] 1 J.C. Sanco, Torts and Damages 24-25 (5th ed., 1994).

[16] See The Fundamentals of Firearms Safety by the Firearms and Explosives Division of the PNP Civil Security Group, (visited 18 February 2010).

[17] Id.

[18] See PNP Circular No. 9, Policy on Firearms and Ammunition Dealership/Repair, <[http://www.fed.org.ph/fed/download/PNP Circulars/PNP Circular No. 9.pdf](http://www.fed.org.ph/fed/download/PNP_Circulars/PNP_Circular_No.9.pdf)> (visited 18 February 2010).

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