

JOHN PHILIP GUEVARRA, PETITIONER, VS. HONORABLE IGNACIO ALMODOVAR, RESPONDENT.*G.R. No. 75256. January 26, 1989*

Ponente: PARAS, J.

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Presented before Us is a special civil action for certiorari against the Honorable Judge Ignacio Almodovar of the City Court of Legaspi, Branch I, Legaspi City, raising beautiful questions of law which We are tasked to resolve. Considering the issues and arguments raised by petitioner, We impleaded the People of the Philippines as party respondents herein in a resolution dated 17 September 1986 (p. 41, Rollo).

The relevant facts gathered from the records are as follows:

Petitioner John Philip Guevarra, then 11 years old, was playing with his best friend Teodoro Almine, Jr. and three other children in their backyard in the morning of 29 October 1984. They were target-shooting a bottle cap (tansan) placed around fifteen (15) to twenty (20) meters away with an air rifle borrowed from a neighbor. In the course of their game, Teodoro was hit by a pellet on his left collar bone which caused his unfortunate death.

After conducting a preliminary investigation, the examining Fiscal exculpated petitioner due to his age and because the unfortunate occurrence appeared to be an accident. The victim's parents appealed to the Ministry of Justice, which ordered the Fiscal to file a case against petitioner for Homicide through Reckless Imprudence. The information dated 9 October 1985 was consequently filed, which narrated in part:

"... the above-named accused, who is over 9 years but below 15 years of age and acting with discernment, did then and there, without taking the necessary pre-cautions to prevent and/or avoid accident or injuries to persons, willfully, unlaw-fully and feloniously operate and cause to be fired, in a reckless and imprudent manner, an air rifle with .22 caliber bore with rifling, oxygen and bolt operated thereby hitting as a result of said carelessness and imprudence one TEODORICO PABLO ALMINE at the left side of the body with its pellet, causing injuries which directly caused his untimely death;..." (p. 8, Rollo)

On 25 October 1985, petitioner moved to quash the said information on the following grounds:

I

THAT THE FACTS CHARGED DO NOT CONSTI-TUTE AN OFFENSE.

II

THAT THE INFORMATION CONTAINS AVER-MENTS WHICH IF TRUE WOULD CONSTITUTE A LEGAL EXCUSE OR JUSTIFICATION.

III

THAT THIS HONORABLE COURT HAS NO JURISDICTION OVER THE OFFENSE CHARGED AND THE PERSON OF THE DEFENDANT. (p. 9, Rollo)

This motion, in an Order dated 4 April 1986, was denied with respect to the first and third grounds relied upon. However, the resolution of the second ground was deferred until evidence shall have been presented during trial.

On 26 July 1986, this present petition for certiorari was filed, raising two (2) issues, to wit:

I

WHETHER AN ELEVEN (11) YEAR OLD BOY COULD BE CHARGED WITH THE CRIME OF HOMICIDE THRU RECKLESS IMPRUDENCE, AND

II

WHETHER THE COURT HAD JURISDICTION OVER THE CASE NOTWITHSTANDING THE FACT THAT IT DID NOT PASS THRU THE BARANGAY LUPON. (Petition, p. 3, Rollo)

Going through the written arguments of the parties, the surfacing of a corollary controversy with respect to the first issue raised is evident, that is, whether the term "discernment", as used in Article 12(3) of the Revised Penal Code (RPC) is synonymous with "intent." It is the position of the petitioner that "discernment" connotes "intent" (p. 96, Rollo), invoking the unreported case of *People vs. Nieto*, G.R. No. L-11965, 30 April 1958. In that case We held that the allegation of "with intent to kill ..." amply meets the requirement that discernment should be alleged when the accused is a minor between 9 and 15 years old. Petitioner completes his syllogism in saying that:

"If discernment is the equivalent of 'with intent', then the allegation in the information that the accused acted with discernment and willfully, unlawfully, and feloniously, operate or cause to be fired in a reckless and imprudent manner an air rifle .22 caliber' is an inherent contradiction tantamount to failure of the information to allege a cause of action or constitute a legal excuse or exception." (Memorandum for Petitioner, p. 97, Rollo)

If petitioner's argument is correct, then no minor between the ages of 9 and 15 may be convicted of a quasi-offense under Article 265 of the RPC.

On the contrary, the Solicitor General insists that discernment and intent are two different concepts. We agree with the Solicitor General's view; the two terms should not be confused.

The word "intent" has been defined as

"(a) design; a determination to do a certain thing; an aim; the purpose of the mind, including such knowledge as is essential to such intent;...; the design resolve, or determination with which a person acts." (46 CJS Intent p. 1103.)

It is this intent which comprises the third element of *dolo* as a means of committing a felony, freedom and intelligence being the other two. On the other hand, We have defined the term "discernment," as used in Article 12(3) of the RPC, in the old case of *People vs. Doquena*, 68 Phil. 580(1939), in this wise:

"The discernment that constitutes an exception to the exemption from criminal liability of a minor under fifteen years of age but over nine, who commits an act prohibited by law, is his mental capacity to understand the difference between right and wrong..." (underscoring Ours) p. 583

From the foregoing, it is clear that the terms "intent" and "discernment" convey two distinct thoughts. While both are products of the mental processes within a person, the former refers to the desired effect of one's act while the latter relates to the moral significance that person ascribes to the said act. Hence a person may not intend to shoot another but may be aware of the consequences of his negligent act which may cause injury to the same person in negligently handling an air rifle. It is not correct, therefore, to argue, as petitioner does, that since a minor above nine years of age but below fifteen acted with discernment, then he intended such act to be done. He may

negligently shoot his friend, thus did not intend to shoot him, and at the same time recognize the undesirable result of his negligence.

In further outlining the distinction between the words "intent" and "discernment," it is worthy to note the basic reason behind the enactment of the exempting circumstances embodied in Article 12 of the RPC; the complete absence of intelligence, freedom of action, or intent, or on the absence of negligence on the part of the accused.[1] In expounding on intelligence as the second element of *dolus*, Albert[2] has stated:

"The second element of *dolus* is intelligence; without this power, necessary to determine the morality of human acts to distinguish a licit from an illicit act, no crime can exist, and because... the infant[3] (has) no intelligence, the law exempts (him) from criminal liability." (emphasis Ours).

It is for this reason, therefore, why minors nine years of age and below are not capable of performing a criminal act. On the other hand, minors above nine years of age but below fifteen are not absolutely exempt. However, they are presumed to be without criminal capacity, but which presumption may be rebutted if it could be proven that they were "capable of appreciating the nature and criminality of the act, that is, that (they) acted with discernment." [4] The preceding discussion shows that "intelligence" as an element of *dolo* actually embraces the concept of discernment as used in Article 12 of the RPC and as defined in the aforementioned case of *People vs. Doquena*, *supra*. It could not therefore be argued that discernment is equivalent or connotes "intent" for they refer to two different concepts. Intelligence, which includes discernment, is a distinct element of *dolo* as a means of committing an offense.

In evaluating felonies committed by means of *culpa*, three (3) elements are indispensable, namely, intelligence, freedom of action, and negligence. Obviously, intent is wanting in such felonies. However, intelligence remains as an essential element, hence, it is necessary that a minor above nine but below fifteen years of age be possessed with intelligence in committing a negligent act which results in a quasi-offense. For him to be criminally liable, he must discern the rightness or wrongness of the effects of his negligent act. Indeed, a minor over nine years of age but below fifteen may be held liable for a quasi-offense under Article 365 of the RPC. A reading of the said Article would reveal such fact as it starts off with the phrase "Any person..." without any distinction or exception made. *Ubi lex non distinguit nec nos distinguere debemos*.

In his last attempt to justify his position equating the words "intent" and "discernment" used under the law, he cites the case of *People vs. Nieto*, *supra*. However, petitioner failed to present the qualifying sentence preceding the ruling he now invokes, which reads:

"That requirement should be deemed amply met with the allegation in the information that she ... 'with the intent to kill, did then and there wilfully, criminally and feloniously push one Lolita Padilla..., into a deep place of the Penaranda River and as a consequence thereof Lolita Padilla got drowned and died right then and there.' This allegation clearly conveys the idea that she knew what would be the consequence of her unlawful act of pushing her victim into deep water and that she knew it to be wrong. (Underscoring Ours)

From the above, it is clear that We did not mean to equate the words "intent" and "discernment." What We meant was that the combined effect of the words used in the information is to express a knowledge, on the part of the accused Nieto, of the wrongness or rightness of her act. Hence, petitioner may not validly contend that since the information now in question alleged "discernment," it in effect alleged "intent." The former may never embrace the idea of the latter; the former expresses the thought of passivity while the latter signifies activity.

Coming now to the second issue of jurisdiction, it is contended by the petitioner that the case against him should have first been brought before the *Lupong Tagapayapa* pursuant to Presidential Decree No. 1508, Section 2(3). He submits that, considering his entitlement to a two-degree privileged mitigating circumstance due to his minority,

P.D. 1508 applies to his case because the penalty imposable is reduced to not higher than arresto menor from an original arresto mayor maximum to prision correccional medium as prescribed in Article 365 of the RPC. This is not correct. The jurisdiction of a court over a criminal case is determined by the penalty imposable under the law for the offense and not the penalty ultimately imposed (*People vs. Caldito*, 72 Phil. 263; *People vs. Purisima*, 69 SCRA 341; *Dioquino vs. Cruz* and *People vs. Savellano*, 116 SCRA 451). The same principle applies in construing Section 2(3) of P.D. 1508, which states:

"xxx xxx xxx

(3) Offenses punishable by imprisonment exceeding 30 days, or a fine exceeding P200.00; x x x "
(underscoring supplied)

Expounding on the above provision, a member of the committee that drafted P.D. 1508 has said:

"The law says 'punishable,' not 'punished.' One should therefore consider the penalty provided for by law or ordinance as distinguished from the penalty actually imposed in particular cases after considering the attendant circumstances affecting criminal liability." [5]

The foregoing finds support in our jurisprudence as above cited. We therefore rule that, in construing Section 2(3) of P.D. 1508, the penalty which the law defining the offense attaches to the latter should be considered. Hence, any circumstance which may affect criminal liability must not be considered.

The petitioner, in his arguments, asserts that since P.D. 1508 has not been complied with, the trial court has no jurisdiction over the case. This erroneous perception has been corrected long before. As intimated in the case of *Royales vs. IAC*, 127 SCRA 470, and categorically stated in *Ebol vs. Amin*, 135 SCRA 438, P.D. 1508 is not jurisdictional.

WHEREFORE, PREMISES CONSIDERED, this petition is hereby DISMISSED for lack of merit and the Temporary Restraining Order effective 17 September 1986 is LIFTED. Let this case be REMANDED to the lower court for trial on the merits. No costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Reyes, *The Revised Penal Code*, Book I, 12th Ed., 1981, p. 213.

[2] Albert, *the Revised Penal Code*, Manila: University Publishing Co., Inc., c1946, p. 22.

[3] *Ibid.*, referring to article 12, Number 2. See footnote, p. 22.

[4] *Ibid.*, p. 82

[5] Pe, Cecilio and Tadiar, Alfredo, "*Katarungang Pambarangay: Dynamics of Compulsory Conciliation*." Manila: UST Press, 1979 p. 65-66.

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