



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **19 February 2020** which reads as follows:*

“G.R. No. 240004 (*Cesar Gonzales y Nario vs. People of the Philippines*). — This Petition for Review on *Certiorari*¹ filed by Cesar Gonzales (petitioner) under Rule 45 of the 1997 Rules of Civil Procedure seeks to annul and set aside the Decision² dated March 6, 2018 and the Resolution³ dated June 4, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39562. The assailed Decision and Resolution affirmed the Decision⁴ dated November 15, 2016 by the Regional Trial Court (RTC) of Lipa City, Branch 12, finding petitioner guilty beyond reasonable doubt of the crime of Homicide.

Petitioner was charged with Homicide by virtue of an Information dated July 21, 2011, the accusatory portion of which reads:

That on or about the 28th day of November, 2010 at about 9:00 o'clock in the morning at City Park Subd., Brgy. Sabang, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a short firearm, without any justifiable cause, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the use of said short firearm one Nickanor N. Amian, thereby inflicting upon the latter gunshot wound, which directly caused his death.

CONTRARY TO LAW.⁵

The petitioner was placed under provisional liberty after approval of his cash bond in the Order dated August 2, 2011 of the lower court.⁶

¹ *Rollo*, pp. 12-29.

² Penned by Associate Justice Celia Librea-Leagogo with Associate Justices Samuel H. Gaerlan (now a Member of this Court) and Associate Justice Marie Christine Azcarraga-Jacob concurring; *id.* at 36-58.

³ *Id.* at 64-65.

⁴ *Id.* at 87-93.

⁵ *Id.* at 37.

⁶ *Id.*

During trial, the Prosecution presented as witnesses: (1) Marissa Amian (Marissa), the victim's wife and the Petitioner's daughter; (2) Dr. Antonio Vertido (Dr. Vertido); (3) Police Officer 2 Luis Quizon De Luna (PO2 De Luna); and (4) Police Officer 3 Arvin Calingasan (PO3 Calingasan).⁷

Marissa is the eyewitness of the crime. She testified that she witnessed her father, herein petitioner, shot and killed her husband in their dirty kitchen in the early morning of November 28, 2010. During that time, her husband was preparing their lunch and was frying fish, while she was bathing her child until she was interrupted by a plea from her mother, Erlinda. When Marissa came out of the house, she saw the petitioner walked towards the back of Erlinda. Petitioner raised his hand, uttered the words "*eto ang sayo*" and shot her husband. At that point, Marissa approached her husband who was holding his chest. The petitioner was about to shoot the victim again but was prevented by Marissa, her brother-Mark Gil (Mark) and Erlinda. In the course of the struggle, Marissa was bitten by the petitioner, but Mark successfully obtained possession of the gun. Marissa then went to her husband while the petitioner ran to his car. With the help of the couple's neighbors, the victim was brought to the Lipa Medix Hospital. However, after 2½ hours the victim died and was brought to the funeral homes. Thereafter, Marissa went to the police station to report the incident.⁸

Marissa also testified that prior to the incident, the petitioner, her mother- Erlinda, and brother- Mark left the house due to an altercation between her husband-the victim and the petitioner. The altercation led to the petitioner attacking the victim but no body contact ensued as Marissa's uncle stepped in.⁹

Finally, to establish the petitioner's civil liability, Marissa testified as to the amount of funeral and other expenses, which were likewise supported by receipts. Marissa also testified that her husband has been receiving pension as a member of the US Army, but nonetheless failed to present documentary proof in support thereof.¹⁰

Witness for the prosecution Dr. Vertido performed an autopsy on the victim, and testified that the latter died due to a gunshot wound on the chest. While PO2 De Luna testified as to the affidavit of Marissa and the evidence he gathered including the weapon used by the petitioner-a caliber .22 Lorcin Pistol with five ammunition inside the magazine.¹¹

⁷ Id. at 38.

⁸ Id.

⁹ Id. at 38-39.

¹⁰ Id.

¹¹ Id. at 39.

For the defense, they presented as witnesses the petitioner himself, and one Cesar Comia (Comia).

The petitioner vehemently denied the accusation against him, and interposed the exempting circumstance of accident. He submitted that Marissa's testimony is absurd as she was not present at the crime scene, but was taking a bath at the comfort room, about 30 meters away from the dirty kitchen. Further, petitioner asserted that he has no ill motive against the victim, in fact he was happy to see that his daughter and son-in-law are living a good life and supporting the family well. He narrated that on the date of the incident, he, together with his wife, went to the house of Marissa. He then proceeded to the dirty kitchen where he saw the victim who was cooking. Suddenly, the victim then carrying a bolo approached the petitioner telling him to take away the chicken or else he will kill it and him as well. With what he believed at that point as a threat upon his life, petitioner moved back and took the gun placed on top of the cabinet. Thereafter, the petitioner and the victim grappled with the possession of the gun, during which, petitioner was surprised when a shot was fired and the victim fell. Anxious, petitioner left the gun to his son, Mark, and left the house.¹²

Comia corroborated the testimony of the petitioner relating to the altercation between the latter and the victim. He testified that he is an agent of used cars and that he went to the house of Marissa to talk to the petitioner about the latter's Honda car. It was then that he saw the victim holding a bolo against the petitioner. He also saw the two grappled with a gun which resulted in the victim getting shot. Stricken by fear of what he witnessed, Comia immediately went outside the garage.¹³

On November 15, 2016, the RTC rendered its Decision¹⁴ convicting the petitioner of the crime of Homicide. The dispositive portion of the RTC decision reads:

WHEREFORE, premises considered, [petitioner] CESAR GONZALES y NARIO is found GUILTY beyond reasonable doubt as principal by direct participation of the crime of Homicide under Article 249 of the Revised Penal Code. As the crime was attended by the privilege mitigating circumstances of passion and obfuscation and voluntary surrender, [petitioner] is SENTENCED to suffer the indeterminate penalty of imprisonment ranging from two (2) years and four (4) months and one (1) day of prision correccional medium up to eight (8) years and one (1) day of prision mayor medium.

He is ordered to indemnify the wife of the victim, Marissa Amian, the amount of P255,000.00 and P15,000.00 as funeral expenses, P76,592.46 for transportation of the cadaver of the victim and P76,592.00 for

¹² Id. at 40.

¹³ Id. at 41.

¹⁴ Id. at 87-93.

Marissa's travel from Honolulu, Hawaii to Philippines or a total of P423, 184.46.

There is no pronouncement as to lost income of the victim because aside from the bare allegation of Marissa Amian that Nickanor was receiving a monthly pension of 541 US Dollars no documentary proof was presented.

SO ORDERED.¹⁵

In so ruling, the RTC did not accept the petitioner's defense that the victim was killed in an accident, finding that the same is negated by the physical evidence presented.¹⁶

The petitioner appealed to the CA, which rendered its Decision on March 6, 2018, dismissing the appeal and affirming with modification the Decision of the RTC in this wise:

WHEREFORE, premises considered, the appeal is DENIED. The Decision dated 15 November 2016 of the Regional Trial Court of Lipa City, Branch 12 in Crim. Case No. 0419-2011, finding [petitioner] Cesar Gonzales y Nario guilty beyond reasonable doubt of the crime of homicide under Article 249 of the Revised Penal Code is AFFIRMED with MODIFICATION, in that he is hereby sentenced 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. Further [petitioner] is ordered to pay the heirs of the victim Php50,000.00 as civil indemnity, Php50,000.00 as moral damages, and Php349,175.23 as actual damages, as well as interest at the rate of six percent (6%) *per annum* on all damages awarded, from the date of the finality of this Decision until fully paid.

SO ORDERED.¹⁷

In fine, the CA affirmed the RTC's ruling except as to the amount of damages. The CA ruled that Marissa's travel expenses should not have been included by the RTC in the award of actual damages as it is "not an expenditure in connection with the death, wake or burial of the victim."

Thus, this petition for review on *certiorari*, whereby the petitioner submits the following error committed by the CA:

THE COURT OF APPEALS GRAVELY ERRED IN FINDING THE PETITIONER GUILTY OF HOMICIDE DESPITE THE INSUFFICIENCY OF THE PROSECUTION'S EVIDENCE TO CONVICT HIM, IN CONTRAST TO THE OVERWHELMING EVIDENCE SUPPORTING PETITIONER'S DEFENSE OF ACCIDENT.¹⁸

¹⁵ Id. at 93.

¹⁶ Id. at 91.

¹⁷ Id. at 57.

¹⁸ Id. at 19.

The Court is not persuaded.

The elements of the crime of homicide as defined and penalized under Article 249 of the Revised Penal Code (RPC) are as follows: a) a person is killed; b) the accused was killed without justifying circumstance; c) the accused has intent to kill, which is presumed; and d) the killing was not attended by any of the qualifying circumstances of murder, or that of parricide or infanticide.¹⁹

In this case, the petitioner admits to the killing of the victim, but submits that the same is an accident, or covered by Article 12 (4) of the RPC, *to wit*:

Article 12. Circumstances which exempt from criminal liability.-
the following are exempt from criminal liability:

Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intent of causing it.

The basis of exempting circumstances under Article 12 of the RPC is the complete absence of intelligence, freedom of action, or intent, or the absence of negligence on the part of the accused.

Specifically, with respect to Article 12, paragraph 4 of the RPC, the basis is lack of negligence and intent. In which case, the accused does not commit either an intentional or culpable felony. The accused commits a crime, but there is no criminal liability because of the complete absence of any of the conditions which constitute free will or voluntariness of the act.²⁰

By definition, an accident is a fortuitous circumstance, event or happening; an event happening wholly or partly through human agency, an event which under the circumstances is unusual or unexpected by the person to whom it happens. In fine, the admission of the accused of killing the victim by accident, the burden is shifted upon him to prove the affirmative defense by clear and convincing evidence, relying on the strength of his evidence and not on the weakness of the prosecution. Failure to discharge the burden results to his conviction.²¹

The existence of the affirmative defense of accident involves a question of fact that is within the province of the trial and appellate courts to resolve. The determination of factual circumstances that serve as basis for the determination of the existence of the extenuating circumstance of accident is beyond the reach of a petition for review. The factual conclusions, especially when consistent on the part of both the trial and the

¹⁹ *Villanueva v. Caparas*, 702 Phil. 609, 616 (2013).

²⁰ *People v. Malicdem*, 698 Phil. 408, 419-420 (2012).

²¹ *Id.* at 420.

appellate courts, are accorded respect, if not finality by this court.²² The same holds true in this case, particularly as no exceptional circumstance obtains for the Court to deviate from the common factual finding by the lower court and the CA that what occurred is not an “accident.”

As correctly pointed out by the CA, the defense of the petitioner fails in light of the testimony of petitioner’s own daughter Marissa as to the words he uttered during the encounter. Furthermore, the manner in which the petitioner reacted is contrary to his theory that the shooting was accidental. Indeed, if the victim was accidentally shot, the natural reaction for the petitioner was to help in bringing the victim, his son-in-law, to the hospital. Here, the petitioner admitted that after seeing the victim fall to the ground, he did not even attempt to help him but instead fled.

More importantly, the autopsy report prepared by Dr. Vertido belies the petitioner's theory of accident. According to Dr. Vertido, the victim sustained two (2) gunshot wounds. One located in the left arm, which is not a mortal wound, while the other one is a gunshot wound on the chest, a mortal wound. A significant part of the autopsy report revealed the absence of gunpowder tattooing or burning around the gunshot wound of the victim in the chest which means that the distance of the gun’s muzzle and in relation to the body of the victim is likely *more than two feet and could not have been closer*.²³

This belies the theory of the petitioner that he shot the victim accidentally as they were grappling for the possession of the gun. On the contrary, the distance with which the gun was fired indicates intent on the part of the petitioner. As rightly observed by the RTC, if indeed the victim was shot by accident, the wound that the victim sustained should have been on the front portion, and not on the left portion particularly that of the left arm making an exit on the posterior side.

As to the alleged inconsistencies in the testimony of Marissa the same are trivial matters that do not negate the presence of the elements of the crime of homicide. Furthermore, in the absence of any ill motive whether alleged or proven, it is highly unlikely that Marissa, the petitioner's own daughter would fabricate and falsely testify against her father and subject him to the serious charge of homicide.

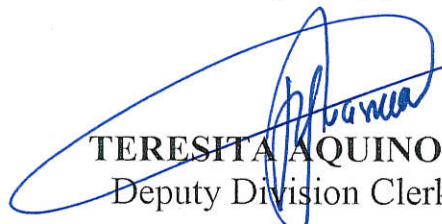
On the presence of mitigating circumstances, the CA correctly ruled that only the mitigating circumstance of voluntary surrender may be appreciated in favor of the petitioner, the same being a matter of record.

²² *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 771 (2013).
²³ *Rollo*, p. 51.

Considering the penalty and the damages imposed by the CA to be in order, there is no reason to modify the same.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated March 6, 2018 and the Resolution dated June 4, 2018 of the Court of Appeals in CA-G.R. CR No. 39562 are **AFFIRMED**.” (adv 58)

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *p. 925*

26 AUG 2020

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