

THIRD DIVISION

[G.R. No. 163331, August 29, 2008]

**ARELLANO NOVICIO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES , RESPONDENT.**

DECISION

NACHURA, J.:

Before this Court is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision^[2] dated July 31, 2003 which affirmed the Decision^[3] of the Regional Trial Court (RTC) of Baler, Aurora, Branch 66, dated May 9, 2001, convicting petitioner Arellano Novicio (petitioner) of the crime of Frustrated Homicide.

The Facts

Petitioner was charged with the crime of Frustrated Homicide in an Information^[4] dated December 11, 1998, for allegedly shooting private complainant Mario Mercado (Mario). The accusatory portion thereof states:

That at about 8:00 o'clock in the evening on September 24, 1998 in Bacong, San Luis, Aurora and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, did then and there, unlawfully, feloniously and willfully attack, assault and use personal violence upon Mario Mercado by shooting him with a short firearm as a result of which the latter sustained a gunshot wound: POE 1 cm., (R) public area, POX 1", lacerated stellate (L) gluteus thereby performing all the acts of execution which would produce crime of Homicide were it not for a timely and effective medical attendance which prevented his death.

CONTRARY TO LAW.

Petitioner voluntarily surrendered and posted the corresponding bail bond for his provisional liberty in the amount of P24,000.00. Thus, the RTC ordered that the warrant of arrest issued against petitioner be recalled.^[5] Upon arraignment on January 29, 1999, petitioner pleaded not guilty to the offense charged.^[6] Thus, trial on the merits ensued. In the course of the trial, two varying versions arose. Said versions as found by the CA are culled as follows:

There are two versions of what had transpired on September 24, 1998, at about 8:00 o'clock in the evening, at Bacong, San Luis, Aurora, particularly in front of the house of Reynaldo Novicio, where the latter's grandchild was having a birthday celebration.

According to private complainant Mario F. Mercado, on that day, time and

place, he was at the party[,] drinking with Edmund Acosta, Alipio Leander, Jr., Reynaldo Novicio, Aniano Paquia, Demetrio Valenzuela and a certain Andy[,] when accused-appellant Arellano Novicio arrived; as the accused-appellant sat with them, he (Arellano) drew a gun from his waist and sat on it after a while, the accused-appellant pointed to him (Mario) saying "*Huwag kang tatayo Boy*"; when he (Mario) was about to stand the accused-appellant shot him; he (Mario) ran to the house of Reynaldo Novicio to hide in a room but Arnold Novicio, the son of the accused-appellant, forcibly opened it saying "*Ano-ano Boy, tapusin na kita*" while aiming a short gun at him; Shelly Novicio[-]Iporac, who was inside the room, shouted "*Papa, may tama si Kuya Mar*" so Arnold left him; then, he (Mario) went out of his hiding place and was later brought to the hospital for treatment,^[7] the accused-appellant had a continuing grudge against him because in the evening of July 23, 1998,^[8] the former also pointed a gun at him.^[9] The private complainant's story is corroborated by his wife, Maricris Mercado^[10] and his father-in-law Demetrio Valenzuela.^[11]

On the part of accused-appellant Arellano Novicio, he claims that when he arrived on that day, time and place via a motorcycle driven by Walfredo Cruz, they were invited to drink with Demetrio Valenzuela, Aniano Paquia, Edmund Acosta, his brother-in-law Andy, his brother Reynaldo Novicio and private complainant Mario Mercado, who were already noisy as there were empty bottles of gin scattered around; before he (Arellano) could sit, the private complainant told him "*O, dumating na pala ang bata ni Governor,*" which statement he ignored because it was obvious that the latter was already drunk; as he (Arellano) conversed with the group, the private complainant told him "*Paano ngayon Sec., amin na ang munisipyo,*" but he pretended not to hear it; it seemed that the private complainant was not satisfied since he continued riling him to the extent of even telling him to prepare because he would be axed (*sibakin*) from the government service; when he (Arellano) could no longer endure the fabrications and lies being told by the private complainant, he told him to stop because no one would believe him; the private complainant, resenting what he (Arellano) had told him, suddenly stood and drew a .38 caliber revolver from his waist and pointed it at him; immediately, he (Arellano) held the hand of the private complainant and tried to get the gun from the latter; since he (Arellano) could not get hold of the gun, he did his best to change the direction to which the same was pointing, as a result of which they grappled with each other until they fell to the ground, causing the gun to go off and finally fall to the ground; at that moment, his (Arellano) brother Reynaldo pulled him and told him to run because the private complainant was in the act of picking up the gun so he ran away as fast as he could; for fear that the private complainant was still looking for him, he (Arellano) went to the house of Dading Serrano and returned home only the following morning when he was informed by his brother Reynaldo that the private complainant was a wounded when the gun went off while they were grappling for its possession; he (Arellano) never had the intention of killing nor injuring the private complainant as shown by the circumstance that he could have shot the private complainant in a

vital part of his body as he was very near him.^[12] The accused-appellant's version is corroborated by Reynaldo Novicio,^[13] Edmund Acosta,^[14] Walfredo Cruz,^[15] Arnold Novicio^[16] and Arnel Pena.^[17] In addition, they allege that after the accused-appellant ran away, they saw the private complainant handing the gun to his father-in-law Demetrio Valenzuela. Arnold Novicio also denied pointing a gun at the complainant.^[18]

As a result of this incident, per medical findings of one Dr. Roberto Correa, (Dr. Correa), Medical Officer IV of the Aurora Memorial Hospital (Hospital), Mario sustained a gunshot wound, the point of entry of which was located in the right pubic area (lower abdomen), measuring one (1) inch in size and the point of exit was located at the left gluteus (buttocks), measuring one (1) inch in size and stellated in shape.^[19] Dr. Correa testified that it is possible that the wound was fatal in nature. Thus, due to the nature of the injury sustained and the possibility of hitting a vital organ, the doctors decided that Mario be transferred to the Dr. Paulino J. Garcia Memorial Research and Medical Center (Center) in Cabanatuan City.^[20]

The RTC's Ruling

On May 9, 2001, the RTC found material inconsistencies in the testimonies of the petitioner and his witnesses, thereby placing their candor and credibility in question. Moreover, the RTC opined that the finding that the crime committed was Frustrated Homicide could be inferred from the kind of weapon used, the location of the wound and the seriousness thereof. Finding that the petitioner used a short revolver as weapon, that Mario sustained a gunshot wound at his lower abdomen and that such was fatal in nature per Dr. Correa's testimony, the RTC held that petitioner was guilty beyond reasonable doubt of the crime of Frustrated Homicide. Thus, the RTC disposed of this case in this wise:

WHEREFORE, premises considered, the Court finds accused Arellano Novicio GUILTY beyond reasonable doubt of the crime of frustrated homicide and considering the mitigating circumstance of voluntary surrender without any aggravating circumstance to offset the same and applying the Indeterminate Sentence Law, hereby sentences him to suffer an indeterminate penalty ranging from **four (4) years, two (2) months and one (1) day of prision correccional as minimum up to eight (8) years of prision mayor as maximum and to pay the costs.**

The Court reserves to Mario Mercado the right to institute a separate civil action for the recovery of the civil liability of the accused.

SO ORDERED.

Aggrieved, petitioner appealed the RTC Decision to the CA.^[21]

The CA's Ruling

On July 31, 2003, the CA affirmed *in toto* the ruling of the RTC, holding that the petitioner's claim that the prosecution's evidence is fabricated and imaginary cannot

prevail over the testimonies by the victim, Mario and his father-in-law, Demetrio Valenzuela (Demetrio), which were credible, sincere and without any showing of ill motive on the latter's part. The CA also held that it is not the number of witnesses that will move a trial court to acquit or convict an accused but the credibility of the witnesses and their sincerity in narrating the events leading to the incident in question. Moreover, the CA discarded petitioner's defense that he merely acted in self-defense. The CA opined that Mario did not commit any unlawful aggression against the petitioner as the latter was in possession of the gun at the time. Finally, the CA accorded great weight and respect to the factual findings of the RTC, particularly in the evaluation of the testimonies of witnesses.

Petitioner filed a Motion for Reconsideration^[22] of the assailed Decision which the CA denied in its Resolution^[23] dated April 20, 2004.

Hence, this Petition based on the following assignment of errors:

1. THE HONORABLE COURT A QUO ERRED IN RULING OUT THAT THE APPELLANT-PETITIONER ACTED IN SELF-DEFENSE; [AND]
2. THE HONORABLE COURT A QUO ERRED IN RULING THAT THE APPELLANT-PETITIONER ACTED WITH INTENT TO KILL.

Petitioner argued that: based on the testimonies of the petitioner and his witnesses, it is clear that petitioner merely acted in self-defense; Mario was the aggressor because he drew his gun and aimed it at petitioner; and the CA manifestly overlooked and failed to perceive such fact. Moreover, petitioner claimed that: petitioner did not act with intent to kill since Mario sustained a single gunshot wound which required only a few days of hospital confinement; the testimony of Dr. Correa gives rise to a reasonable doubt as to the serious nature of the said wound as Dr. Correa stated that it was possible that the wound was fatal in nature; Dr. Correa's medical findings do not justify petitioner's conviction for Frustrated Homicide as it is required that the assailant must have performed all acts of execution to effectuate the intent to kill. Verily, such intent must be proved beyond reasonable doubt. Thus, where intent to kill was not sufficiently established, the accused must be convicted of a less serious offense.^[24] Furthermore, petitioner's defense that he did not own the said gun must be given credence by this Court as it was corroborated by other competent witnesses that before Mario boarded the tricycle, he handed the said gun to Demetrio. Lastly, petitioner submitted that there is a question of law involved in this case as the Court is asked to resolve the doubts or differences as to what the law is on certain state of facts, hence, the instant Petition under Rule 45 is in order.^[25]

On the other hand, respondent People of the Philippines through the Office of the Solicitor General (OSG) averred that: the petitioner's guilt has been proven beyond reasonable doubt; petitioner failed to establish his claim of self-defense; invoking such claim of self-defense, the burden of proving his innocence is now shifted to the petitioner; standing by the ruling of the RTC, it is unnatural for the petitioner's relatives not to tender any aid if he was indeed attacked by Mario; petitioner could have reported the matter immediately to the police; Shelly Novacio-Iporac's testimony rebutted the claim of the petitioner and his other witnesses that Mario as the aggressor immediately ran away after the incident and that petitioner handed the gun to his father-in-law, Demetrio; there was no unlawful aggression on the part