

THIRD DIVISION

[G.R. NO. 148923, August 11, 2005]

VICENTE LAMIS AND SANDIGAN PROTECTIVE & INVESTIGATION AGENCY, INC., PETITIONERS, VS. DAVID Y. ONG, RESPONDENT.

DECISION

SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on certiorari filed by Vicente Lamis and Sandigan Protective & Investigation Agency, Inc. assailing the Decision^[1] dated March 13, 2001 of the Court of Appeals and its Resolution dated June 28, 2001 in CA-G.R. CV No. 61034, entitled "*David Y. Ong, petitioner, versus Vicente Lamis and Sandigan Protective & Investigation Agency, Inc., respondents.*"

The facts as shown by the records are:

Sandigan Protective and Investigation Agency, Inc. (Sandigan), petitioner, was the security agency providing security services at the Manila Chinese Cemetery. The visiting hours were at 6:00 a.m. to 6:00 p.m. Sandigan instructed the security guards not to allow any one to enter the cemetery from 6:00 p.m. to 6:00 a.m.

On September 20, 1994, Vicente Lamis, also a petitioner, was the guard assigned at the south gate of the cemetery for the 6:00 p.m. to 6:00 a.m. slot.

Around 3:00 in the morning, a Mitsubishi Lancer, with a PSM 679 plate, driven by David Y. Ong, herein respondent, arrived at the south gate of the cemetery. He beeped his car and continued doing so, but Lamis did not open the gate. Eventually, he went outside the gate and informed respondent that being beyond visiting hours, he cannot enter the cemetery. Suddenly, respondent accelerated the speed of his car, trying to enter the cemetery. This irked Lamis. He closed the gate and took a shot gun entrusted to him by one of the roving guards.

About thirty minutes thereafter, respondent's car returned at full speed toward the closed gate where Lamis was standing. He fired a warning shot but respondent did not stop his car. Lamis fired another warning shot. Respondent then alighted from his car. Seeing it was closed, he got inside the car, but before he could do so, Lamis shot him, hitting his right arm, left hip, and right waist. He managed to drive to the Chinese General Hospital where he was examined and treated. Thereafter, the hospital guard reported the incident to the police who immediately conducted an investigation.

Petitioner Sandigan conducted its own investigation but did not turn over to the police the firearm used by Lamis.

Subsequently, Sandigan paid Lamis' mother the amount spent for his medical

expenses. Meanwhile, he was given another job but he absented from work without leave. Thus, he was suspended and eventually dismissed from the service.

On March 16, 1994, respondent filed with the Regional Trial Court, Branch 45, Manila a complaint for frustrated homicide against Lamis, docketed as Criminal Case No. 94-J-27836.

Later, or on March 31, 1995, respondent also filed a complaint for damages against both petitioners, docketed as Civil Case No. 95-73446. On March 20, 1998, the trial court rendered a Decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, the defendants Vicente Lamis and Sandigan Protective & Investigation Agency, Inc. are ordered to pay jointly and solidarily to plaintiff the following amounts:

1. Five Hundred Thousand Pesos (P500,000.00) as moral damages;
2. Three Hundred Thousand Pesos (P300,000.00) as exemplary damages;
3. Fifty Thousand Pesos (P50,000.00) as attorney's fees, and;
4. The costs of suit.

The respective counterclaims of the defendants are dismissed for lack of merit.

SO ORDERED."^[2]

On appeal, the Court of Appeals rendered the assailed Decision affirming the trial court's judgment, holding that:

X X X

"We do not agree with the appellants (now petitioners).

X X X

Indeed, the acts of appellant Lamis were not the result of negligence but were **deliberate and intentional** constituting, as they were, delictual acts for which he was even charged of "**Frustrated Homicide**" in "**People versus Vicente Lamis, Criminal Case No. 94-J-27836**" (**Exhibit "H"**). Hence, we agree with the court *a quo* that appellant Lamis' plea of having acted in complete self-defense in shooting the appellee with two (2) guns and, hence, not civilly liable to the appellee, is barren of merit.

X X X

The appellants fault the court *a quo* for not giving approbation to appellant Lamis' plea of having acted in self-defense. But, then, case law has it that the findings of facts of the trial court, its calibration of the testimonial evidence of the parties, the probative weight accorded by the

court *a quo* of the evidence of the parties and its conclusions anchored on its findings, are accorded by the Appellate Court, high respect, if not, conclusive effect, because of the unique advantage of the trial court of observing, at close, range, the demeanor and conduct of the witnesses as they regale the court with their respective testimonies.

x x x

Our Supreme Court expostulated in "***Maria A. Dulay, et al. versus Court of Appeals, et al., 293 SCRA 720***" that the law is not limited, in scope, to acts or omissions resulting from negligence. It also includes acts committed with negligence and **acts that are voluntary and intentional**, whether such acts are delictual or not and whether or not the defendant is prosecuted in a criminal case independently and separately from the civil action instituted by the aggrieved party for the recovery of damages against the offending party x x x.

x x x

The next issue that comes to fore is whether or not appellant Sandigan mustered the requisite quantum of evidence to prove that it exercised due diligence of a good father of a family in the selection and its supervision of its employees to prevent damage/injuries.

x x x

In the present recourse, appellant Sandigan failed to discharge its burden. The appellant relied solely on a copy of its Rules and Regulations, Exhibit "1", and the testimony of Salvador Manansala to discharge its burden.

x x x

Appellant Sandigan's utter neglect was made more pronounced when it failed to adduce in evidence any copy of its Report on the shooting incident involving appellant Lamis. Neither did it surrender to the police authorities the .38 caliber gun and shotgun used by appellant Lamis in shooting the appellee.

x x x

The appellants, however, plead that the awards for damages be reduced because of the flagrant violation by the appellee of the curfew imposed by the management of the cemetery. We are not inclined to agree to appellant's plea. We find and consider the awards by the court *a quo* reasonable in the light of the factual milieu in the present recourse."

Petitioner filed a motion for reconsideration but the Appellate Court denied the same in its Resolution dated June 28, 2001.

Hence, the instant petition for review on *certiorari* raising the following issues: