

## SECOND DIVISION

[ G.R. No. 126624, November 11, 2003 ]

**OSCAR SANTOS Y PANGANIBAN, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS .**

### D E C I S I O N

**CALLEJO, SR., J.:**

Before the Court is a petition for review on *certiorari* filed by Oscar Santos y Panganiban seeking to reverse and set aside the Decision<sup>[1]</sup> dated March 15, 1996, of the Court of Appeals in CA-G.R. CR No. 15858, which affirmed *in toto* the decision<sup>[2]</sup> of the Regional Trial Court of Malolos, Bulacan, Branch 9, finding the petitioner guilty beyond reasonable doubt of two counts of frustrated homicide. Likewise sought to be reversed and set aside is the appellate court's Resolution of October 1, 1996, denying the petitioner's motion for reconsideration.

The case stemmed from two Informations charging the petitioner with two counts of frustrated homicide. The accusatory portion of the first Information docketed as Criminal Case No. 1929-M-90 reads:

That on or about the 15<sup>th</sup> day of May, 1990, in the municipality of Paombong, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a jungle bolo and with intent to kill one Roy de Borja did then and there wilfully, unlawfully and feloniously attack, assault and hack with the said jungle bolo he was then provided the said Roy de Borja, inflicting upon him physical injuries which ordinarily would have caused his death, thus performing all the acts of execution which would have produced the crime of homicide as a consequence, but nevertheless did not produce it by reason of causes independent of his will, that is, by the timely medical assistance rendered to said Roy de Borja which prevented his death.<sup>[3]</sup>

The accusatory portion of the second Information, docketed as Criminal Case No. 1930-M-90 reads:

That on or about the 15<sup>th</sup> day of May, 1990, in the municipality of Paombong, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a jungle bolo and with intent to kill one Loreto Hernandez did then and there wilfully, unlawfully and feloniously attack, assault and hack with the said jungle bolo he was then provided the said Loreto Hernandez, inflicting upon him physical injuries which ordinarily would have caused his death, thus performing all the acts of execution which would have produced the crime of homicide as a consequence, but nevertheless did not produce it by reason of causes independent of his will, that is, by the timely medical

assistance rendered to said Loreto Hernandez which prevented his death.

[4]

At his arraignment, the petitioner, assisted by counsel, pleaded not guilty to the charges against him. A joint trial of the cases ensued.

As culled from the trial court's decision, the evidence for the prosecution, consisting mainly of the testimonies of the victims Roy de Borja and Loreto Hernandez, established the following:

At 7:00 p.m. on May 15, 1990, Loreto Hernandez, a resident of Brgy. Sto. Rosario, Paombong, then employed with the Manila Hotel as a security guard and his companion Roy de Borja, were walking along a narrow footpath on their way home from a visit to a mutual friend, Fely Jumaquio. Upon reaching that portion of the footpath in front of the house of Rufino Panganiban (a maternal uncle of petitioner Oscar P. Santos), the petitioner and his brother Pedro Santos, Jr. suddenly emerged into view and effectively blocked their way. Hernandez greeted the petitioner by his name "Ka Oscar" but, without much ado, Pedro, Jr. aimed a .45 calibre automatic pistol at the face of Hernandez, and squeezed the trigger of the gun which, fortunately, did not fire. Forthwith, the petitioner hacked Hernandez twice with a jungle bolo. Hernandez was struck; first, at the right forearm which he defensively raised to parry the blow and, second, at the right side of the head. Hernandez fell to the ground semi-unconscious, blood oozing from his wounds. The petitioner then turned to De Borja who attempted to flee. The petitioner stabbed De Borja at the back, near the waistline. De Borja fell to the ground, and saw the petitioner hack another person whom he could not identify. The petitioner even told his brother, "*Utol, Jr. alis na tayo; patay na ang mga iyan.*"

As soon as the petitioner and his brother left the premises, De Borja, although himself already injured, endeavored to help Hernandez to his feet. The two crossed a river and proceeded to the barangay road where, at the foot of a bridge, Hernandez was left behind, as De Borja went to look for any available vehicle that would take them to the hospital. While Hernandez was waiting for De Borja, a tricycle appeared. Hernandez boarded the same and proceeded to the De Leon Clinic in Paombong, where he was refused admission for undisclosed reasons. Thereafter, Hernandez boarded another tricycle which brought him to the provincial hospital at Malolos where he was administered blood transfusion and extended first-aid treatment. Due presumably to the inadequacy of the medical facilities of the provincial hospital, Hernandez was transferred aboard an ambulance in the early morning of the ensuing day (May 16) to the Jose Reyes Memorial Medical Center in Sta. Cruz, Manila. Hernandez underwent immediate surgical operation of the complete fracture of the ulnar bone of his right forearm and confined for medical treatment until his discharge therefrom on June 5.

Dr. Alex Castillo operated on Hernandez and issued a medico-legal certificate, which contains the following findings:

Wound hacked 9 cm. temporo-parietal left sutured  
S/P open reduction and internal fixation (K-wire pinning and circlage wiring)  
Open fracture complete proximal third ulna right  
Abscess proximal third forearm right

Wound lacerated 3 cm. dorsal aspect wrist right  
SURGICAL PROCEDURE: Open reduction and K-wire pinning and circlage  
wiring ulna right.<sup>[5]</sup>

Because of the eventual onset of massive infection of the injury inflicted on his right forearm, Hernandez underwent a second surgical operation of the affected area on December 20, 1990<sup>[6]</sup> which necessitated his confinement once more at the Jose Reyes Memorial Medical Center from December 19 to 26 of that year.<sup>[7]</sup>

For his hospitalization and medical treatment, Hernandez incurred expenses in the aggregate amount of P16,237.71.<sup>[8]</sup> As a result of the injuries sustained by him, Hernandez was incapacitated to perform his customary work as security guard of the Manila Hotel<sup>[9]</sup> from May 16, 1990, until he took the witness stand on December 17, 1990. In fact, he was being readied at the time for a contemplated third surgical operation of the same injured forearm.

Hernandez testified that upon boarding a Ford Fiera pick-up, he lost consciousness. He regained consciousness only at the provincial hospital in Malolos where he received initial medical treatment. In the early morning of May 16, he was brought *via* an ambulance to the Jose Reyes Memorial Medical Center where he was surgically operated on for the various injuries he sustained, and was confined therein up to May 20.

Dr. Renato Vergara treated and attended to De Borja. According to the medico-legal certificate he issued, De Borja sustained a 15-cm. hacking wound at the right posterior lumbar region of the body which penetrated the right hemidiaphragm as well as the right lobe of the liver, necessitating medical attention for more than thirty days. De Borja underwent post-operative treatment at the provincial hospital in Malolos and, on the whole, incurred medical expenses in the amount of P20,000, more or less, the receipts for which were lost when their house was ruined by a typhoon.

The testimonies of Hernandez and De Borja on the hacking incident were corroborated by Aurelio Dionisio and Antonio Bonton who, shortly before the incident, were requested by the wife of Hernandez to fetch the latter at the house of Jumaquio. It was while they were on their way to fulfill the errand that Dionisio and Bonton were able to witness the hacking incident.

Having been hacked himself by the petitioner during the same incident resulting in lacerated wounds on the left cheek, left shoulder and base of the fingers of the left hand for which he was confined in a hospital for five days, Bonton similarly filed a separate complaint for frustrated homicide against the petitioner with another branch of the trial court.<sup>[10]</sup>

For his part, the petitioner interposed self-defense. He claimed that he hacked Hernandez and De Borja only as an act of self-defense. The trial court summarized the petitioner's testimony as follows:

Testifying on his behalf, the accused declared that having been off-duty on May 15, 1990, he invited his fellow security guard Primo Oria and the latter's wife to his hometown of Paombong to attend a barrio fiesta.

Travelling all the way from Pasay City, the group arrived in Paombong at about noon of that day. In the evening, the accused, his wife and children and Mr. and Mrs. Oria attended mass at a chapel in Brgy. San Isidro where the fiesta was being celebrated, after which they returned to his house at Brgy. Sto. Rosario.

Because his TV set was out of order at the time, the accused and the Oria spouses repaired [*sic*] to the nearby house of Pedro Santos, Jr. in order to view the championship game between "Añejo Rum 65" and "Shell" in connection with the then on-going phase of the Philippine Basketball Association (PBA) competitions. That basketball game was marred by a walk-out staged by "Añejo Rum 65" even before the match was over, which led to the proclamation of the "Shell" team as champion. Thus, the accused and his guests went back to his house for dinner.

As the wife of the accused was preparing supper at around 8:30 o'clock that night, a group of men were heard shouting from outside the house. Curious, the accused peeped thru a window of the house to see for himself who the persons shouting were. With the light emanating from the terrace of the house, he was able to see the persons of Loreto Hernandez, Roy de Borja, Antonio Bonton and Aurelio Dionisio who were already inside the frontyard of his house; three (3) other males whom he was not able to identify were seen near the river beyond the yard. When he was seen peeping thru that window, the accused heard Aurelio Dionisio remark: "Ayan si Oscar, barilin mo na." That utterance prompted the accused and Oria to turn off the lights inside the house in order that the interior would be completely dark as a precautionary measure.

While the commotion outside the house was taking place, the accused heard Dionisio in particular utter the following statements: "Putang ina mo. Lumabas ka ryan. Papatayin ka namin. Iisa-isahin ko ang mga kasama mong ipinagmamalaki. Huwag kang magtayo [*sic*] sa saya ng asawa mo. Magpakalalake ka. Putang ina mo." Apparently irked by the refusal of the accused to confront them, the group of Hernandez and De Borja started pelting the house with stones, causing some window panes to break and the plaster finish of the walls to chip off as depicted by colored photographs (Exhs. 12, 20-A, 21-A & 22-A).

Rather than be taunted into a likely violent encounter, the accused sneaked out of his house thru a backdoor to seek outside help. Under cover of the darkness of night, the accused went to the house of ex-barangay captain Rey Salamat, but did not find him there. The accused proceeded to the house of Juanito Salamat, a policeman brother of the ex-barangay captain, but also failed to see him. The accused next knocked at the door of the house of Julian (one of the Salamat brothers) to whom he reported the presence of the group of troublemakers at his yard. After expressing the assurance that he will immediately and personally summon his brother Juanito (who was then on duty at the municipal building), Julian advised the accused to return to his house inasmuch as something untoward might have already befallen the members of his family. Taking heed of Julian's advice, the accused decided to go back home by taking that pathway in front of the house of

his uncle, Rufino Panganiban.

On his way home, the accused met Carmelita Panganiban who, after having been apprised of the trouble taking place within the yard of his house, directed the accused to hurry home. However, when the accused was about a meter away from the gate of Rufino Panganiban's house, he met the group of Loreto Hernandez, Antonio Bonton, Roy de Borja, Aurelio Dionisio and several others, who lurked beyond a bend of the pathway. As he came face to face with the accused, Hernandez blurted out: "Eto pala ang hinahanap natin." Already apprehensive, the accused took a step backward but, at that instant, Hernandez drew a gun from his waist and from a distance of some 2 meters aimed the weapon at the head of the accused. Almost simultaneously, the accused heard someone (whom he suspected to be Aurelio Dionisio) exclaim: "Sige, barilin mo na ang putang inang yan." Realizing that his life was in imminent danger and because it was all but impossible for him to run away by then, the accused, with the use of the bolo with which he armed himself when he stepped out of his house to seek assistance from his neighbors, hacked Hernandez's outstretched arm gripping the gun. Because of the hacking blow, the firearm which Hernandez pointed at the accused was flung somewhere; Hernandez himself fell to the ground by the seat of his pants [*sic*].

At the time, Bonton and Dionisio were each armed with a piece of 2"x 2" wood, while De Borja was holding a fanknife [*sic*]. Seeing Hernandez subdued, the trio menacingly rushed towards the accused who kept flailing his bolo aimlessly in order to keep his attackers at bay. Even as the accused cannot determine whether he struck anyone in the process, his attackers "moved backward". Given such opportunity, the accused ran away and proceeded directly to the municipal hall to report the incident. He did not surrender his bolo to the police authorities because, in his confusion, he must have thrown the weapon away somewhere along his route.<sup>[11]</sup>

The petitioner's testimony was corroborated by his first degree cousin Restituto Cardenas, his uncle Rufino Panganiban, the latter's daughter-in-law Carmelita Panganiban, Julian Salamat, Primo Oria, as well as other witnesses whose respective testimonies were synthesized by the trial court, thus:

. . .

2) Mario Robles, chief barangay tanod of Sto. Rosario and one of his barangay tanods, Pedro Santos, Jr. (a brother of the accused), panting and visibly frightened, arrived at his house between 8:00 and 9:00 p.m. on May 15, 1990 to seek his help because the group of Aurelio Dionisio alias "Boy Kano" attacked the residence of the accused challenging him to a fight-to- death. Responding to the call for assistance, he sought out barangay councilman Oscar Salamat and both went to the scene of the reported incident, but found no one in the place anymore. They investigated the premises of the house of the accused and saw for themselves the stones thrown at the house, the broken window panes and marks of damages on a wall of the house.