

## SECOND DIVISION

[ G.R. No. 112995, July 30, 1998 ]

**VICENTE PALU-AY, PETITIONER, VS. COURT OF APPEALS, HON. EDGAR D. GUSTILO, PEOPLE OF THE PHILIPPINES AND DOMINGO PULMONES, RESPONDENTS.**

### DECISION

**MENDOZA, J.:**

Petitioner seeks a review of the decision<sup>[1]</sup> of the Court of Appeals dismissing a petition for annulment of the judgment in Criminal Case No. 20974 which he had filed in the Regional Trial Court of Iloilo, Branch 28. Petitioner contends that the trial court decided the case outside the issues made out by the pleadings and, therefore, acted without due process. Consequently, the Court of Appeals should have annulled the trial court's decision.

It appears that at about 5:30 p.m. in the afternoon of March 30, 1986, petitioner Vicente Palu-ay and private respondent Domingo Pulmones were having drinks with Edgar Soldevilla, Jonathan Fernandez, Efren Lauron, Basilio Pulmones, and Tirzo Superio at the house of Nelson Irecillo when a gun (a .38 caliber Super) being held by Pulmones went off near the face of petitioner. As a result, petitioner sustained serious injuries which could have been fatal had it not been for timely medical attention given to him. As a result of the incident, petitioner's face was paralyzed.

An information for frustrated homicide, later amended to frustrated murder, was filed with the Regional Trial Court of Iloilo, Branch 28 against private respondent. Private respondent pleaded not guilty, whereupon trial was held.

The prosecution presented evidence showing that while petitioner and private respondent were having drinks with their group, Emeterio Dermil tried to join but was sent away by private respondent for the reason that it was a family affair the group was having. Dermil resented what he had been told and gave private respondent an angry look. For this reason, Pulmones stood up to confront Dermil, but the latter ran away. Pulmones tried to run after him but was unable to catch him. Pulmones returned to the group about five minutes later holding a gun and shot petitioner with it. Petitioner asked Pulmones why he shot him (petitioner) as Pulmones ran away.

The defense corroborated the version of the prosecution up to the point where Pulmones tried to run after Dermil. However, it is claimed by the defense that as Pulmones tried to rejoin the group, he saw a gun tucked at the back of Efren Lauron. He took it with the intention of entrusting it to petitioner. As he was showing the gun which he had placed on his palm to petitioner, however, the latter turned to look at him, whereupon petitioner's face touched the gun and it went off. The defense, therefore, claimed that the shooting of petitioner was merely accidental for

which reason private respondent incurred no criminal liability.

On March 27, 1991, the trial court rendered a decision finding private respondent Domingo Pulmones guilty of serious physical injuries through reckless imprudence; sentencing him to suffer imprisonment ranging from 6 months of *arresto mayor*, as minimum, to 4 years and 2 months of *prision correccional*, as maximum; and ordering him to indemnify petitioner in the amount of P264,424.040 as actual damages, P50,000.00 as moral damages for the permanent disability of petitioner, P20,000.00 as exemplary damages, and P10,000.00 as attorney's fees, and to pay the costs.

The trial court found that Pulmones had no motive to do petitioner harm, let alone kill him, noting that petitioner and private respondent were "close friends and relatives and had no quarrel . . . prior to the incident in question." They were with the same group drinking on the occasion of the barangay fiesta. The trial court held that, in all probability, Pulmones' finger was resting on the trigger when he showed the gun to petitioner, so that when petitioner turned to look at him, his cheek touched the gun and Pulmones accidentally pressed the trigger.

Pulmones did not appeal his conviction and the decision became final and executory. On April 18, 1991, he filed an application for probation which the trial court granted on May 24, 1991.

On April 29, 1993, petitioner filed this case for annulment of judgment with the Court of Appeals. The case was, however, dismissed. In its decision rendered on December 9, 1993, the Court of Appeals held that petitioner could not validly file a petition for annulment of judgment without the approval of the Solicitor General; that the petition was an attempt to secure review of a final and executory decision of the trial court; and, that a review of the case would expose the accused to double jeopardy.

Hence, this petition. Two issues are raised: (1) whether or not the petitioner has personality to file a petition for annulment of judgment and, (2) if so, whether the judgment should be annulled.

First. Petitioner contends that the appellate court erred in ruling that a private complainant cannot file a petition for annulment of judgment without the Solicitor General's approval except only as to the civil aspect of the case. He invokes the ruling in *People v. Santiago*<sup>[2]</sup> in which this Court sustained the right of the private complainant in a criminal case to file a petition for certiorari to set aside the judgment rendered in the criminal case on the ground that the prosecution had been deprived of due process. This Court made it clear, however, that such action may be brought by the private complainant only insofar as the civil aspect of the case is concerned:

It is well-settled that in criminal cases where the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability. Thus, in the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General. Only the