

TWENTY-SECOND DIVISION

[CA-G.R. SP NO. 05097-MIN, February 12, 2015]

**PEOPLE OF THE PHILIPPINES AND DANTE SEVILLA,
PETITIONERS, VS. THE PRESIDING JUDGE HON. JORDAN H.
REYES OF THE REGIONAL TRIAL COURT OF ISULAN, SULTAN
KUDARAT, AND LOIDA L. LEAL. RESPONDENTS.**

D E C I S I O N

INTING, J.:

Before Us is a Petition for *Certiorari*^[1] under Rule 65 brought by petitioner Dante Sevilla seeking to annul the Order of public respondent Judge Jordan H. Reyes of the Regional Trial Court of Isulan, Sultan Kudarat dated February 23, 2012^[2] granting the Demurrer to Evidence filed by the accused, and the Order^[3] dated June 21, 2012 denying his motion for reconsideration.

The facts of the case are as follows:

As testified to by petitioner Dante Sevilla (Sevilla) in the Regional Trial Court, he is a Master Teacher at Laguilayan National High School in Isulan, Sultan Kudarat. At about 2:45 in the morning of April 24, 2009 he was at the gymnasium of Barangay Dukay, Esperanza as he was invited to be one of the sponsors of the family disco in preparation for the 50th Foundation Anniversary of the Barangay. At around 2:45 in the morning, in the gymnasium, accused Loida Leal grabbed her pistol, pointed it at Sevilla who was seated on a chair, and immediately shot him. Sevilla was hit at the lower portion of his right armpit with the bullet exiting at the left portion of his back. According to him, accused was four (4) meters, more or less away when she fired the gun.

Sevilla was brought to the Ala Tamondong Hospital along the National Highway where he was treated by one Dr. Ocsio and stayed for almost seven hours. His bill amounted to Twenty Thousand Pesos (P20,000.00) but it was paid by the wife of Mayor Romulo Latog of Esperanza who happened to be the cousin of the accused. He was later transferred to St. Elizabeth Hospital in General Santos City where he was confined for thirteen days and was billed Fifty-Three Thousand Pesos (P53,000.00). This time it was the accused who paid for the hospital bill.

Ebenezer Sevilla, petitioner Sevilla's cousin testified that at the time of the incident he was standing at the left side of petitioner Sevilla; and that he saw accused Loida Latog Leal shoot petitioner Sevilla from a distance of three to four meters. According to him, he asked the accused why he shot petitioner Sevilla; but accused just kept quiet.

Cyrine Grace Sevilla, petitioner's daughter was also presented in court and testified that she and her uncle had so far bought medicines amounting to Six Hundred

Thousand Pesos (P600,000.00); and that the bill at St. Elizabeth Hospital was paid by Erna, the niece of accused.

PO1 Donato Guillermo testified that he was assigned to investigate the incident; that he interviewed Mr. Dodong Sua-an (Sua-an), a companion of accused; that Sua-an told him that about 3 in the morning of April 24, 2009, while he and the accused were going out of the gymnasium but before they could reach the gate, the accused pulled a gun from her waist and fired towards the place where petitioner was seated; and that he accordingly took the gun and turned it over to Barangay Captain Love Latog. PO1 Guillermo further testified, however, that he did not put into writing his investigation; that there is also no record in their office showing that Sua-an went there; and that he knows that the incident was entered in the blotter of the Police Station.

The last witness presented by the prosecution was Dr. Nerio Ocsio, the doctor on duty at the time that petitioner was brought to the hospital. In his medical abstract^[4] his findings were as follows:

PERTINENT PE FINDINGS:V/S BP 80/60 mmhz RR: 34/cm Hr: 170/cm
CHEST AND LUNGS: Unequal Chest Expansion H1 GSW o rightmaxilla
(point of entry) with powder burns at the rim of entry. xxx.

A part of the transcript of stenographic notes⁵ dated February 22, 2011 reads:

Q: Doctor, there is powder burns at the rim entry. will you please explain to us what is this powder burns at the rim of entry?

A: Powder burn it is a collective term we use indicating that the rim of the gunshot wound area is somewhat burned, together with the contusion markings of the bullet. In other words, there were some other doctors will name it as contusion or abrasion caused by the entry of the bullet and this can also be called rimming.

Q: Based on that powder burns in your experienced (sic) doctor how far is the muzzle of the gun that was used in shooting the victim?

A: I cannot determine the actual distance of the gun on the patient but one thing is sure that the assailant or the gun must be more than 60 centimeters.

Q: More than sixty (60) centimeters that would be one meter or two meters?

A: That would be two (2) meters.

On cross examination:

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Q: In other words, this representation and the honorable court is made to understand that there was or there were burnings around the entrance wound?

A: yes sir.

Q: And you call it gun powder burns?

A: yes sir.

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Q: So when you said earlier doctor that you found some burning surrounding the gunshot wound that could have been because the fire from the muzzle of the gun used by the assailant is within the flame zone or less than six (6) inches from the body of the victim.

ATTY. ALAMADA: I think that is misleading, your honor. What the witness said is a rim, your honor.

COURT: the witness said he found some rimming in the entrance wound which probably was caused by the gun powder. No burning it was only rimming in the entrance wound. No burning actually there was only rimming according to the witness which could have been caused by gun powder. You can confront him on what he wrote in the Medical Abstract.

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Q: in other words, what you found was or were powder burns in the rim of entrance wound, correct?

A: Yes, sir. A while ago sir I described my way of understanding the powder burns. These includes I mentioned that hot object penetrated on the skin and included with it like the abrasion caused by burning around the area.

Q: in this case, based on what you have reported and what you could recall, was there or were there burning at the rim of the wound?

A: There was definitely burning.

Q: And because there was burning in other words, the muzzle of the gun of the assailant within that what we call flame zone which is six inches or less?

A: No sir, I disagree.

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After having presented its fifth and last witness, the prosecution rested its case.

Instead of presenting evidence, the defense, with leave of court, filed a Demurrer to Evidence on the ground that there is lack of evidence proving beyond reasonable doubt that the accused is the assailant or the person who shot complainant Dante Sevilla.

The RTC granted the Demurrer to Evidence and reasoned:

In the instant case, and as said elsewhere, the complainant and his cousin, the corroborative witness Ebenezer Sevilla testified that he was shot by the accused who was between 3 to 5 meters away from him. However, the Court cannot just close its eyes and completely ignore the

findings of Dr. Ocsio that "powder burns" are found in "the rim of entry" of the gun shot wound, the import of which is that he (complainant) was either deliberately or accidentally shot by an assailant who fired his gun, the muzzle of which was 24 inches or less away from him. Based on the foregoing and consonant to the rule that in gun shot wounds the burning, powder tattooing, and smudging are prominent when the muzzle of the gun fired is 24 inches or less away from the victim and disappear or are absent when the muzzle of the gun fired is beyond 24 inches away from the victim, it is crystal clear that the accused Loida Latog Leal could not have been the assailant or the person who shot the complainant. On this score, the accused is entitled to an acquittal on grounds of reasonable doubt. Or, put differently, the identity of the assailant of the complainant was not proved beyond reasonable doubt."

Sevilla filed a Motion for Reconsideration filed but the RTC denied it in its Order dated June 21, 2012^[6].

Thus, Sevilla comes to this Honorable Court on his own via a petition for *certiorari* under Rule 65 questioning the RTC's granting of the Demurrer of Evidence in effect acquitting the accused Loida Latog Leal. Petitioner raises the following issues:

I.

WHETHER OR NOT THE RESPONDENT COURT ACTED WITHOUT JURISDICTION AND/OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN HOLDING THAT THE ACCUSED COULD NOT BE THE ASSAILANT IN AS MUCH AS THE PRIVATE COMPLAINANT TESTIFIED THAT HE WAS (4) TO FIVE (5) METERS FROM THE ACCUSED WHEN THE LATTER SHOT HIM, CONTRARY TO THE MEDICAL ABSTRACT WHICH INDICATE POWDER BURNS AT THE RIM OF ENTRY;

II.

WHETHER OR NOT RESPONDENT COURT ACTED WITHOUT JURISDICTION AND/OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DISMISSING THE CASE ON THE GROUND THAT THE PROSECUTION FAILED TO ESTABLISH ANY MOTIVE ON THE PART OF THE ACCUSED/PRIVATE RESPONDENT TO COMMIT THE CRIME.

On the other hand, in respondent Loida L. Leal's Memorandum, she poses the following issues:

I.

WHETHER OR NOT PETITIONER DANTE SEVILLA THE COMPLAINING WITNESS BEFORE THE TRIAL COURT, CAN ON HIS OWN, APPEAL BY WAY OF THE INSTANT PETITION THE ORDER OF THE SAID COURT DATED FEBRUARY 23, 2012 GRANTING PRIVATE RESPONDENT'S DEMURRER TO EVIDENCE AND THE ORDER OF THE SAME COURT DATED JUNE 21, 2012 DENYING PETITIONER'S MOTION FOR RECONSIDERATION OF THE SAID

II.

GRANTING WITHOUT ADMITTING THAT PETITIONER DANTE SEVILLA CAN APPEAL THE TRIAL COURT'S ORDERS DATED FEBRUARY 23, 2012 AND JUNE 21, 2012, WHETHER OR NOT THE PUBLIC RESPONDENT JUDGE ISSUED THE SAID ORDERS WITHOUT OR IN EXCESS OF HIS JURISDICTION AND/OR WITH GRAVE ABUSE OF DISCRETION.

The Court's Ruling

The petition is without merit.

"Only the OSG, and not the private offended party, has the authority to question the order granting the demurrer to evidence in a criminal case." [7]

Petitioner Sevilla erred in coming to this Honorable Court via a petition for *certiorari* on his own without the intervention of the Office of the Solicitor General or the City Prosecutor, praying:

[T]hat the order dated February 23, 2012 and June 21, 2012 be annulled and set aside and an (sic) ORDER the honorable Court a qou(sic) to reinstate the case and order the accused/private respondent to present her evidence and accordingly decide the same in accordance with the evidence presented.

The Supreme Court has consistently held that the acquittal of the accused or the dismissal of the case against him can only be appealed by the Solicitor General, acting on behalf of the State. [8]

The case of *Delgado and Pasico v. Gonzalez and Buenaflor* [9] pronounced:

Section 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987 states that the Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. Likewise, the Solicitor General shall represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings, thus:

Section 35. Powers and Functions. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. It shall have the following specific powers and functions: