

## FIRST DIVISION

**[ G.R. No. 157106, September 03, 2008 ]**

### **ROMULO TINDOY, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT. D E C I S I O N**

#### **LEONARDO-DE CASTRO, J.:**

By this petition for review, petitioner Romulo Tindoy seeks the annulment and setting aside of the Decision<sup>[1]</sup> dated April 25, 2002 of the Court of Appeals (CA), as reiterated in its Resolution<sup>[2]</sup> of February 6, 2003, in *CA-G.R. CR No. 22574*, affirming an earlier decision of the Regional Trial Court (RTC) of Pasig City, Branch 167 which adjudged the petitioner guilty beyond reasonable doubt of the crime of Homicide.

The facts:

On August 15, 1995, herein petitioner, SPO1 Romulo Tindoy, together with his fellow police officers PO1 Manuel Fernandez (Fernandez) and PO3 Ariel Sanchez (Sanchez), was charged before the RTC of Pasig City with the crime of Homicide, allegedly committed, per the indicting Information<sup>[3]</sup> docketed as Criminal Case No. 108640, as follows:

That on or about the 29<sup>th</sup> day of August 1993 in the Municipality of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above named accused, conspiring and confederating together and all of them mutually helping and aiding one another, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and inflict personal violence upon the person of one Dominador Viernes, thereby causing him to sustain mortal injuries which directly caused his death.

CONTRARY TO LAW.

When arraigned, the three accused, assisted by counsel, entered a plea of "Not Guilty." In time, trial ensued.

In the ensuing trial, the prosecution presented in evidence the testimonies of Consolacion Viernes, mother of the victim Dominador Viernes, Elsie Fernandez (Elsie), common-law wife of the victim and alleged eyewitness, Dr. Florante Baltazar, the designated Medico-Legal Officer of Bulacan who performed the autopsy on the cadaver of the victim, Dr. Raul Palma, the neurosurgeon who examined the victim when he was brought to the Makati Medical Center for a CT-scan, and Dr. Nestor Bautista, the neurologist who examined the images imprinted in and made the official findings of the result of the CT-scan.

For its part, the defense adduced in evidence the testimonies of petitioner and hi co-

accused PO3 Sanchez, as well as Dr. Eugenio Alonzo, the physician who attended to the couple at the Rizal Medical Center, Antonio Aleviado Sr., a *Barangay Tanod*, Sandro Salve, and Elias Abaño, an alleged eyewitness to the couple's quarrel before the arrival of the police.

It is not disputed that in the early evening of August 29, 1993, petitioner, together with PO1 Fernandez and PO3 Sanchez responded to a call for police assistance regarding a case of domestic violence. It was reported that the victim was beating his common-law wife Elsie at their residence at Block 72, Lot 36, Purok 5, Valdez St., Upper Bicutan, Taguig.

When the policemen arrived at the couples' residence the victim had already left the house to buy cigarettes at a nearby store. The couple was nonetheless invited to the police station for questioning. Thereafter, the couple was brought to the Rizal Medical Center where the couple was examined for injuries. Elsie was released that same evening while the victim was detained overnight and released only in the afternoon of the following day August 30, 1993.

On August 31, 1993, the victim was rushed to the Fort Bonifacio Hospital complaining of chills and severe headache. Upon recommendation of the attending physician, the victim was brought to the Makati Medical Center for a CT-scan.

On September 2, 1993 the victim died due to traumatic head injuries. The autopsy conducted by Dr. Florante Baltazar yielded the following findings:

#### FINDINGS:

Fairly developed, fairly nourished male cadaver in rigor mortis with postmortem lividity over the dependent portions of the body. Conjunctivae, lips and nailbeds were pale. There were needle puncture marks at the dorsum of right hand.

#### EXTERNAL INJURIES: HEAD AND NECK:

- 1) Healed abrasion, right frontal region, 6.5 cms. from anterior midline, measuring 1.5 cms x 0.4 cm.
- 2) Hematoma, right peri-orbital region, 4.5 cms. from anterior midline, measuring 7 cms. x 4.5 cms.
- 3) Healed abrasion, right supra-orbital region, 4 cms. from anterior midline measuring 0.4 cm x 0.5 cm.
- 4) Healed abrasion, right lateral aspect of the neck, 8 cms. from midline measuring 2 cms x 0.2 cm

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#### CONCLUSION:

Cause of death is traumatic injury, head. [4]

From the foregoing admitted or undisputed facts, the prosecution and the defense presented conflicting versions as to how the fatal head injuries were sustained by the victim.

According to Elsie, the lone eyewitness for the prosecution when the couple was invited to the police station, the victim refused to go with the policemen commenting, "*Wala kayong pakialam, away mag-asawa ito*" and informed the

policemen that he is a military man. In the end the policemen prevailed and the couple was brought to the Taguig police sub-station. While being frisked by PO3 Sanchez, the victim remarked, "*Wala akong dala at sundalo ako.*" To this PO1 Fernandez commented "*Sundalong Kanin.*" The victim's immediate retort *Hindi ako ganoon* infuriated PO1 Fernandez who punched the victim on the head causing the latter to fall and hit his head against the wall. Petitioner then picked the victim up from the floor and together with PO1 Fernandez and PO3 Sanchez dragged the victim to the comfort room. From the comfort room door Elsie saw the three policemen throw fistic blows on the head of the victim with each hand held by petitioner and PO3 Sanchez. Upon seeing her husband's predicament, Elsie pleaded with the station commander Lieutenant Romeo De Castro to stop the three policemen from beating the victim but her pleas landed on deaf ears. The mauling lasted for three to five minutes.<sup>[5]</sup> Thereafter, the couple was brought to the Rizal Medical Center where the victim received treatment. Elsie was then released while the victim was detained overnight and released only in the afternoon of the following day, August 30, 1993.

Elsie denied having hit her husband during their argument. Her narration of what transpired between her and the victim is contained in her sworn statement which was also admitted in evidence.<sup>[6]</sup>

The defense has its own account of what purportedly actually transpired.

Petitioner and SPO3 Sanchez denied having manhandled the victim. They insisted that it was Elsie who inflicted the fatal injuries on the victim when she hit the latter with a piece of 2x2 wood during their quarrel. According to petitioner, when they arrived at the couple's house to respond, to a domestic violence report, they were joined by a *barangay tanod* prosecution witness Antonio Aleviado. They found the victim drunk and had a bruise on his right eye. Elsie, on the other hand, had a hematoma on her face. The policemen admitted that the victim resisted going to the police station but added that they did not take such resistance against the victim because the latter eventually joined them. After the investigation, the policemen took the couple to the Rizal Medical Center for treatment. The defense underscored the fact that when the victim was asked by Dr. Eugenio Alonzo where he got the bruise on his left eye the victim replied that his wife hit him with a piece of wood.

On July 31, 1998, the trial court rendered its decision<sup>[7]</sup> finding the petitioner and his co-accused guilty of the crime of Homicide. Dispositively, the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused SPO1 ROMULO TINDOY, PO3 MANUEL FERNANDEZ and PO3 ARIEL SANCHEZ all "GUILTY" beyond reasonable doubt of the offense of Homicide defined and penalized under Article 249 of the Revised Penal Code and each of them is sentenced to an indeterminate penalty of imprisonment of Eight (8) Years and one (1) Day of prision mayor, as minimum, to Fourteen (14) Years, Eight (8) Months and One (1) Day of reclusion temporal, as maximum; to indemnify the offended party in the amount of P 71, 900.00, by way of actual damages; to suffer all accessory penalties consequent thereto; and, to pay the costs.

SO ORDERED.