

THIRD DIVISION

[G.R. NO. 153650, August 31, 2006]

FIDEL V. AMARILLO, JR., PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND RAUL HERMO, RESPONDENTS.

DECISION

QUISUMBING, J.:

For review on certiorari are the Decision^[1] dated January 31, 2001, of the Court of Appeals, in CA-G.R. CR. No. 22071, and its Resolution^[2] dated May 8, 2002, denying reconsideration. The impugned decision modified the judgment^[3] dated March 31, 1998, of the Regional Trial Court (RTC) of Baler, Aurora, Branch 66 in Criminal Cases Nos. 1932 and 1933 and found petitioner Fidel V. Amarillo, Jr. guilty of frustrated homicide only.

The antecedent facts in this case are as follows:

On November 15, 1994, two separate informations docketed as Criminal Cases Nos. 1932 and 1933 were filed against petitioner Fidel V. Amarillo, Jr. The information in Criminal Case No. 1932 charged Amarillo with illegal possession of firearm and ammunition under Presidential Decree No. 1866,^[4] committed as follows:

That on the 3rd day of September, 1994 at around 10:30 o'clock (sic) in the evening at the Amihan Hotel and Restaurant at the Poblacion, Municipality of Baler, Province of Aurora, Philippines, the said accused, did then and there, wilfully, unlawfully and feloniously carry and have in his possession and under his custody and control one (1) .38 caliber Smith and Wesson (Paltic) Revolver together with four (4) live ammunitions without first having secured the necessary license and permit to carry said firearm from the proper authorities.

CONTRARY TO LAW.^[5]

The information in Criminal Case No. 1933 charged him with frustrated homicide, committed as follows:

That on the 3rd day of September, 1994, at around 10:30 o'clock (sic) in the evening at the Amihan Hotel and Restaurant at the Poblacion, Municipality of Baler, Province of Aurora, Philippines, the said accused, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one Raul Hermo, by then and there shooting the latter at his forehead with a .38 caliber revolver thereby inflicting upon him serious physical injuries, thus performing all the acts of execution which should 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 and able medical assistance rendered to said Raul Hermo which prevented his death.

CONTRARY TO LAW.^[6]

Upon arraignment, Amarillo pleaded not guilty.^[7] Thereafter, joint trial ensued.^[8]

The prosecution and the defense differ in their versions of the events. The gist of the prosecution evidence is as follows:

On September 3, 1994, private respondent Raul Hermo, with his companions Herminio Ade, Leoncio Ade, Ricky Ramirez, Danilo Palmero, and Edgardo Soriano went to the Amihan Disco and Restaurant to celebrate Herminio Ade's birthday. At that time, the group of Amarillo, Joseph Alvin Bihasa, Ramses Barribal, and Bimbo Bernardo was already there. Hermo's group occupied a table near them. The waitress switched on the stand fan near the table of Hermo's group and faced the fan towards them. However, Amarillo stood up and redirected the fan towards his group. Soriano told Barribal to just switch off the fan to be fair to all. Barribal obliged but Amarillo switched it on again. Thereafter, he shifted a gun tucked on the left side of his waist to the right side. Hermo approached and talked to Amarillo. Without any warning, Amarillo shot Hermo in the forehead causing him to fall. Hermo's group rushed towards Amarillo and wrestled the gun from him.

Amarillo's story is that he and his friends were already using the fan when Hermo's group arrived. Ramirez took it and directed it towards their group. When Amarillo felt hot, he pressed the fan's button to make it swivel. Thereafter, Ramirez started throwing peanuts at him. Bihasa approached Hermo's group but was pushed back to their table. When Amarillo stood up, Soriano pointed a gun at Amarillo. Amarillo parried the gun but it suddenly exploded. When he tried to see if anyone was hit, someone struck him in the head making him unconscious. Amarillo regained consciousness only inside the police vehicle enroute to the hospital.

After trial, the RTC resolved the case as follows:

WHEREFORE, premises considered, the Court

- a. In Criminal Case No. 1932 finds Fidel Amarillo, Jr. guilty beyond reasonable doubt of the crime of illegal possession of firearm and ammunition defined and penalized under P.D. 1866 as amended by R.A. 8294, and considering the presence of the mitigating circumstance of voluntary surrender without any aggravating circumstance to offset the same, hereby sentences him to suffer an indeterminate penalty of ten (10) years and one (1) day of prison mayor as minimum to seventeen (17) years and four (4) months and one (1) day of reclusion temporal as maximum with all the accessory penalties provided by law; and to pay the cost;
- b. In Criminal Case No. 1933, the Court likewise finds accused Fidel Amarillo, Jr. guilty beyond reasonable doubt of frustrated homicide and taking into consideration the mitigating circumstance of voluntary surrender, without any aggravating circumstance to offset

the same, hereby sentences him to suffer an indeterminate penalty of four (4) years and two (2) months of prision correccional as minimum to eight (8) years of prision mayor as maximum with all the accessory penalties provided by law; to indemnify the offended party Raul S. Hermo the sum of P338,317.45 as civil indemnity; and to pay the costs.

In both cases, the accused shall be credited in the service of his sentence with the full time during which he has undergone preventive imprisonment, if he agreed voluntarily to abide by the same disciplinary rules imposed upon convicted prisoners; otherwise with four-fifths thereof.

SO ORDERED.^[9]

Amarillo appealed to the Court of Appeals.^[10] He faulted the trial court for (1) convicting him although the prosecution failed to prove his guilt beyond reasonable doubt of the crimes of frustrated homicide and illegal possession of firearm; and (2) acting with gross and manifest bias and partiality.

While the Court of Appeals agreed with the factual findings of the trial court, it concluded that Amarillo should have been convicted only of frustrated homicide in Criminal Case No. 1933 and the use of unlicensed firearm should have been considered as an aggravating circumstance only. However, such aggravating circumstance should be offset with the mitigating circumstance of voluntary surrender. The dispositive portion provides:

WHEREFORE, in the light of the foregoing, the Decision in Criminal Case No. 1933 for frustrated homicide is hereby **MODIFIED** to reflect that accused-appellant is hereby sentenced, pursuant to the Indeterminate Sentence Law and Section 1 of R.A. No. 8294 which amended P.D. No. 1866, and taking into consideration the mitigating circumstance of voluntary surrender, to suffer an indeterminate penalty of eight (8) years, eight (8) months and one (1) day of prision mayor as minimum to nine (9) years and four (4) months of prision mayor as maximum. Said Decision in other respects not inconsistent herewith is **AFFIRMED**.

The Decision in Criminal Case No. 1932 for illegal possession of firearm and ammunition is **SET ASIDE**, and accused-appellant is **ACQUITTED** thereof.

SO ORDERED.^[11]

Hence, the instant petition raising the following issues:

- A. WHETHER OR NOT THE JUDGE A *QUO* IS LEGALLY DISQUALIFIED TO HEAR THE CASE AGAINST THE ACCUSED.
- B. WHETHER OR NOT THE . . . PROCEEDINGS BEFORE THE JUDGE A *QUO* AMOUNTED TO A MISTRIAL RESULTING IN A GROSS MISCARRIAGE OF JUSTICE.