

## THIRD DIVISION

**[ G.R. No. 150647, September 29, 2004 ]**

**ROWENO POMOY, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### **DECISION**

**PANGANIBAN, J.:**

Well-established is the principle that the factual findings of the trial court, when affirmed by the Court of Appeals, are binding on the highest court of the land. However, when facts are misinterpreted and the innocence of the accused depends on a proper appreciation of the factual conclusions, the Supreme Court may conduct a review thereof. In the present case, a careful reexamination convinces this Court that an "accident" caused the victim's death. At the very least, the testimonies of the credible witnesses create a reasonable doubt on appellant's guilt. Hence, the Court must uphold the constitutional presumption of innocence.

### **The Case**

Before us is a Petition for Review<sup>[1]</sup> under Rule 45 of the Rules of Court, seeking to set aside the February 28, 2001 Decision<sup>[2]</sup> and the October 30, 2001 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-GR CR No. 18759. The CA affirmed, with modifications, the March 8, 1995 judgment<sup>[4]</sup> of the Regional Trial Court (RTC)<sup>[5]</sup> of Iloilo City (Branch 25) in Criminal Case No. 36921, finding Roweno Pomoy guilty of the crime of homicide. The assailed CA Decision disposed as follows:

"WHEREFORE, premises considered, MODIFIED as to penalty in the sense that the [Petitioner] ROWENO POMOY is sentenced to suffer an indeterminate prison term of six (6) years, four (4) months and ten (10) days of prison mayor minimum, as minimum, to fourteen (14) years eight (8) months and twenty (20) days of reclusion temporal medium, as maximum, the decision appealed from is hereby AFFIRMED in all other respects."<sup>[6]</sup>

The challenged CA Resolution denied petitioner's Motion for Reconsideration.

Petitioner was charged in an Information worded thus:

"That on or about the 4<sup>th</sup> day of January 1990, in the Municipality of Sara, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with his .45 service pistol, with deliberate intent and decided purpose to kill, and without any justifiable cause or motive, did then and there willfully, unlawfully and feloniously assault, attack and shoot one TOMAS BALBOA with the service pistol he was then provided, inflicting upon the latter gunshot wounds on

the vital parts of his body, which directly caused the death of said victim thereafter.”<sup>[7]</sup>

### **The Facts** **Version of the Prosecution**

The Office of the Solicitor General (OSG) presented respondent’s version of the facts as follows:

“Tomas Balboa was a master teacher of the Concepcion College of Science and Fisheries in Concepcion, Iloilo.

“On January 4, 1990, about 7:30 in the morning, some policemen arrived at the Concepcion College to arrest Balboa, allegedly in connection with a robbery which took place in the municipality in December 1989. With the arrest effected, Balboa and the policemen passed by the Concepcion Elementary School where his wife, Jessica, was in a get-together party with other School Administrators. When his wife asked him, ‘Why will you be arrested?’ [H]e answered ‘[Even I] do not know why I am arrested. That is why I am even going there in order to find out the reason for my arrest.’

“Balboa was taken to the Headquarters of the already defunct 321<sup>st</sup> Philippine Constabulary Company at Camp Jalandoni, Sara, Iloilo. He was detained in the jail thereat, along with Edgar Samudio, another suspect in the robbery case.

“Later that day, about a little past 2 o’clock in the afternoon, petitioner, who is a police sergeant, went near the door of the jail where Balboa was detained and directed the latter to come out, purportedly for tactical interrogation at the investigation room, as he told Balboa: ‘Let’s go to the investigation room.’ The investigation room is at the main building of the compound where the jail is located. The jail guard on duty, Nicostrado Estepar, opened the jail door and walked towards the investigation room.

“At that time, petitioner had a gun, a .45 caliber pistol, tucked in a holster which was hanging by the side of his belt. The gun was fully embedded in its holster, with only the handle of the gun protruding from the holster.

“When petitioner and Balboa reached the main building and were near the investigation room, two (2) gunshots were heard. When the source of the shots was verified, petitioner was seen still holding a .45 caliber pistol, facing Balboa, who was lying in a pool of blood, about two (2) feet away. When the Commanding Officer of the Headquarters arrived, he disarmed petitioner and directed that Balboa be brought to the hospital. Dr. Palma (first name not provided) happened to be at the crime scene as he was visiting his brother in the Philippine Constabulary. When Dr. Palma examined Balboa, he (Dr. Palma) said that it was unnecessary to bring Balboa to the hospital for he was dead.

“Upon the request of Mrs. Jessica Balboa, the wife of the deceased, Dr.

Ricardo Jabonete, the medico-legal officer of the National Bureau of Investigation, Region VI, Iloilo City, conducted an autopsy on the remains of Tomas Balboa. The following were his findings:

*'Pallor, integuments and nailbeds.*

*'Wound, gunshot: (1) ENTRANCE, downwards and medially, edges, modified by sutures, surrounded by abrasion collar, 0.6 cm. In its chest, left side, 10.0 cms. from anterior midline, 121.0 cms. From left heel, directed medially backwards from left to right, penetrating chest wall thru 5<sup>th</sup> intercostals space into thoracic cavity, perforating thru and thru, upper lobe, left lung, lacerating left ventricular wall causing punched out fracture, 8<sup>th</sup> thoracic vertebra and make an EXIT, stellate in shape, 1.0 x 0.8 cm. Edges, modified by sutures, back, right side, 8.0 cms. From posterior midline, 117.0 cms. From right heel (2) ENTRANCE, ovaloid, oriented medially downwards, edges sutured, 0.7 cm. on its widest portion, at infero-medial border, hypochondriac region, left side, 4.0 cms. From anterior midline, 105.0 cms. From left heel, directed backwards, laterally wall into penetrating abdominal cavity, perforating thru and thru, stomach, head of the pancreas and mesentery, make an exit, ovaloid, 1.0 x 0.8 cm., oriented medially upwards, edges, sutured, back, left side, level of 9th intercostal space, 4.5 cms. From posterior midline, 110.0 cms. From left heel. x x x.*

*'CAUSE OF DEATH: Hemorrhage, massive secondary to gunshot wounds on chest and abdomen.*

*'REMARKS: Body previously embalmed and autopsied.'*

"Dr. Jaboneta testified that the two (2) wounds he found on x x x Balboa's body were gunshot wounds. The entrance of [W]ound No. 1 was to the left side of the chest about the left nipple and exited to the right side of the back. Its trajectory was backwards then downwards from left to right. As to the possible position of the assailant, Dr. Jaboneta opined that the nozzle of the gun was probably in front of the victim and was more to the left side, and the gun must have been a little bit higher than the entrance wound. Wound No. 2 was located immediately below the arch of the ribs, left side. Its direction was backwards and laterally upwards. Dr. Jaboneta estimated that when it was inflicted, the assailant must have pointed the gun's nozzle to the right side front of the victim. The distance between the entrance points of wounds No. 1 and No. 2 was found to be about 16.0 centimeters."<sup>[8]</sup>

### **Version of the Defense**

The Petition adopted the narration of facts in the assailed CA Decision, which in turn culled them from the trial court. The RTC summarized the testimonies of Defense Witnesses Erna Basa, the lone eyewitness to the incident; Eden Legaspi; Dr. Salvador Mallo Jr.; and petitioner himself, as follows:

"Erna Basa:

"x x x [O]n January 4, 1990, she was working in their office in the camp up to the afternoon; at about past 2 o'clock that afternoon while working on the backlogs, she heard some noise and exchange of words which were not clear, but it seemed there was growing trouble; she opened the door to verify and saw Roweno Pomoy and Tomas Balboa grappling for the possession of the gun; she was inside the room and one meter away from the door; Pomoy and Balboa while grappling were two to three meters away from the door; the grappling happened so fast and the gun of Pomoy was suddenly pulled out from its holster and then there was explosion; she was not certain who pulled the gun. x x x.

"Eden Legaspi:

"x x x [A]s early as 1:30 o'clock in the afternoon of January 4, 1990 she was inside the investigation room of the PC at Camp Jalandoni, Sara, Iloilo; at about 2 o'clock that same afternoon while there inside, she heard a commotion outside and she remained seated on the bench; when the commotion started they were seated on the bench and after the commotion that woman soldier (referring to Erna Basa) stood up and opened the door and she saw two persons grappling for the possession of a gun and immediately two successive shots rang out; she did not leave the place where she was seated but she just stood up; after the shots, one of the two men fall down x x x.

"Accused-petitioner Roweno Pomoy:

"He is 30 years old and a PNP member of the Iloilo Provincial Mobile Force Company then attached to the defunct 321<sup>st</sup> PC Company; he was one of the investigators of their outfit; about 2 o'clock or past that time of January 4, 1990 he got Tomas Balboa from their stockade for tactical interrogation; as he was already holding the door knob of their investigation room and about to open and enter it, all of a sudden he saw Tomas Balboa approach him and take hold or grab the handle of his gun; Tomas Balboa was a suspect in a robbery case who was apprehended by the police of Concepcion and then turned over to them (PC) and placed in their stockade; he asked the sergeant of the guard to let Balboa out of the stockade for interrogation; from the stockade with Balboa walking with him, he had his .45 caliber pistol placed in his holster attached to his belt on his waist; then as he was holding the doorknob with his right hand to open the door, the victim, who was two meters away from him, suddenly approached him and grabbed his gun, but all of a sudden he held the handle of his gun with his left hand; he released his right hand from the doorknob and, with that right hand, he held the handle of his gun; Tomas Balboa was not able to take actual hold of the gun because of his efforts in preventing him (Balboa) from holding the handle of his gun; he used his left hand to parry the move of Balboa; after he held the handle of his gun with his

right hand, in a matter of seconds, he felt somebody was holding his right hand; he and Balboa grappled and in two or three seconds the gun was drawn from its holster as both of them held the gun; more grappling followed and five seconds after the gun was taken from its holster it fired, the victim was to his right side when the attempt to grab his gun began and was still to his right when the gun was drawn from its holster until it fired, as they were still grappling or wrestling; his gun was already loaded in its chamber and cocked when he left his house, and it was locked when it fired; during the grappling he used his left hand to prevent Balboa from holding his gun, while the victim used his right hand in trying to reach the gun; after the gun fired, they were separated from each other and Balboa fell; he is taller than Balboa though the latter was bigger in build; he cannot say nor determine who of them was stronger; after Balboa fell, Sgt. Alag shouted saying 'stop that' and he saw Sgt. Alag approaching; sometime after, Capt. Rolando Maclang, their commanding officer, came, got his gun, and said that the case be investigated as to what really happened. He said that when his gun was put in its holster only its handle protrudes or comes out from it.

"Upon cross-examination, he said that Balboa was a suspect in a robbery case that happened during the first week of December, 1989; he was the one who filed that case in the town of San Dionisio and that case involves other persons who were also detained; before January 4, 1990 he had also the chance to invite and interrogate Balboa but who denied any robbery case; x x x [I]t was after he took his lunch that day when Capt. Maclang called him to conduct the interrogation; when he took Balboa from the stockade he did not tell him that he (Balboa) was to be investigated in the investigation room which was housed in the main building which is fifty meters, more or less, from the stockade, likewise houses the administrative office, the office of the commanding officer, officer of the operations division and that of the signal division; his gun was in its holster when the victim tried to grab it (gun); from the time he sensed that the victim tried to grab his gun, he locked the victim; the hand of the victim was on top of his hand and he felt the victim was attempting to get his gun; that the entire handle of his gun was exposed when placed inside its holster; he cannot tell whether the victim, while struggling with him, was able to hold any portion of his gun from the tip of its barrel to the point where its hammer is located; during the incident his gun was fully loaded and cocked; Sgt. Alag did not approach, but just viewed them and probably reported the incident to their commanding officer; he was not able to talk to Sgt. Alag as he (Pomoy) was not in his right sense; when his commanding officer came some five to ten minutes later and took away his gun he did not tell him anything.

"Dr. Salvador Mallo Jr.