

SECOND DIVISION

[G.R. No. 150607, November 26, 2004]

SANCHO MILITANTE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND THE COURT OF APPEALS, RESPONDENTS.

DECISION

CALLEJO, SR., J.:

On June 7, 1994, petitioner Sancho Militante was charged with the complex crime of attempted and frustrated homicide in an Information filed with the Regional Trial Court (RTC) of Iriga City, the accusatory portion of which reads:

That on or about the 12th day of March 1994 at about 11:30 o'clock (*sic*) in the evening, at Barangay Dolorosa, Municipality of Nabua, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with a handgun, did then and there willfully, unlawfully and feloniously shoot with said handgun one Joven Sombrero but instead hit Maricris Torriente, a girl, 13 years old, hitting her on her body thus accused have (*sic*) performed all the acts of execution which would have produced the crime of homicide but nevertheless did not produce it by reason or causes independent of the will of the accused that is by the timely and able medical attendance rendered to said Maricris Torriente which prevented her death, to her damage and prejudice as to be proven in court.

ACTS CONTRARY TO LAW.^[1]

In due course, the prosecution adduced evidence showing that -

On March 12, 1994, about 11:30 o'clock (*sic*) in the evening at Barangay Dolorosa, Nabua, Camarines Sur, during the barangay fiesta, a dance was in progress at the hall which was about ten (10) meters away from the barangay chapel. (Tsn, Nov. 10, 1994, p. 12)

At the same time and date, Dolorosa Barangay Tanod Ramon Orante was in front of the chapel mentioned above as he was on duty to maintain peace and order during the fiesta. While thus situated, Orante saw the appellant and some persons drinking beer inside the dance hall. At that time, the appellant was a policeman stationed at Nabua, Camarines Sur. After the group consumed more than two (2) bottles of Beer Grande, the appellant left the dance hall. Orante saw him walking towards the chapel in a zigzag manner (Tsn, Nov. 10, 1994, p. 11). Then [the] appellant saw Joven Sombrero, a soldier, and sat with him on the pavement. Orante later saw the appellant and Sombrero arguing. The appellant was apparently drunk as he was sitting on the pavement and would pull Sombrero down everytime he would stand up (Tsn, Nov. 10, 1994, pp. 3,

In order to pacify the appellant and Sombrero, Orante and another barangay tanod were ordered by the Barangay Chairman to fetch Cornelio Bermido, Jr., a policeman. Upon Bermido's arrival at the scene, he tried to stop the argument by telling the appellant that he and Bermido were both policemen. Somehow, Sombrero invited Bermido and the appellant to join him (Sombrero) inside the hall where the dance was in progress. The appellant said that he did not like that, and the argument went on, with the appellant insisting that he was a veteran of 13 years in the service and Sombrero countering that he had just come from a mission. The argument worsened such that Sombrero and the appellant went around a parked motorcycle as they argued. Then, the appellant drew a gun from his waist. This prompted Bermido to lead Sombrero away from the appellant towards the chapel. While they were walking away, the appellant having drawn his gun from his waist, fired it at Sombrero. Instead of hitting Sombrero, appellant hit 13-year-old Maricris Torriente who was passing by and who thereby fell on the ground (Tsn, Nov. 10, 1994, p. 6). Orante could not assist Maricris Torriente immediately because the appellant continued to hold his gun. In a few minutes, the appellant fled on a motorcycle driven by his companion, SPO3 Manuel Relativo, a policeman also stationed at Nabua, Camarines Sur.

[The] appellant having fled from the premises, Orante picked the bloodied Maricris Torriente up and asked one Indet Laynesa to take her to the hospital. She was taken to the Holy Child Hospital, then to the Bicol Regional Hospital at Nabua, Camarines Sur (Tsn, Nov. 10, 1994, pp. 7-8, Nov. 24, 1994, p. 4).

Ruben Torriente, the father of Maricris Torriente, came to know of the shooting at about past 11 o'clock in the evening on March 12, 1994 through his aunt. When he went to the chapel in the barangay, he learned from the Barangay Chairman that her daughter, Maricris, had been shot by the appellant (Tsn, Nov. 24, 1994, pp. 2-5). Later, when he went to the Bicol Regional Hospital, he was told that the condition of his daughter was 50/50. Her critical condition lasted for seventy-two (72) hours. Maricris stayed at the hospital for nineteen (19) days and all in all, Ruben Torriente spent P55,000.00 for doctor's fees, medicines and related expenses (Tsn, Nov. 24, 1994, pp. 5-7). After Maricris was discharged from the Bicol Regional Hospital, he noticed that his daughter did not feel well, so he brought her to the Figuracion Clinic at Nabua, Camarines Sur, where she was attended to by Dr. Fabio F. Figuracion. According to Ruben Torriente, Maricris was operated on by Dr. Figuracion and a bullet/slug was removed from her body (Tsn, Nov. 24, 1994, pp. 5-7). He spent another P16,000.00 for the operation (Tsn, Nov. 24, 1994, p. 6).

Dr. Wulfrano Ricafort, Jr., surgeon, Bicol Regional Hospital, Nabua, Camarines Sur, was the attending physician when Maricris Torriente was admitted to that hospital on March 13, 1994 at 2:20 a.m., where she was operated on. She had two (2) perforations on her small bowel, one (1)

perforation on her large bowel and her right kidney was almost shattered. The operation made both ends of her small bowel meet, sutured the hole on her large bowel, and removed her right kidney to stop its bleeding (t.s.n., Jan. 24, 1996, pp. 7-8). Dr. Ricafort issued a Medical Report stating her physical condition as follows:

Gunshot wound, 0.5 cm. (pt of entry), periumbilical right
Gunshot wound, 0.8 cm. (pt of exit), 9th MSL, right.
Perforating ileum, 2 pts. Perforating colon, 1 pt. Penetrating
lower pole right kidney.

(Exh. B, Rec., p. 167)

Dr. Ricafort testified that without the timely medical intervention, Maricris Torriente would have died (Tsn, Jan. 24, 1996, p. 7).^[2]

As culled by the trial court in its decision, the evidence of the petitioner is as follows:

As evidence for the defense, SPO3 Manuel Relativo, a member of PNP, Nabua, Camarines Sur, claimed that he was the officer-in-charge of the PNP substation at Tandaay, Nabua, Camarines Sur on March 12, 1994.

That evening of March 12, 1994, he was the team leader of the police team composed of SPO1 Sancho Militante, SPO2 Jaime Blazado and himself, to maintain peace and order at Barangay Dolorosa, Nabua, Camarines Sur, on the occasion of the barrio fiesta.

He assigned SPO1 Militante at the gate of the dancing (*sic*) hall while they went inside the dancing (*sic*) hall to patrol. While going around the dancing (*sic*) hall, he heard a shot. He first tried to observe and he saw SPO1 Militante chasing a man. Upon seeing this, he went to the place of the incident and inquired of Militante what happened. Militante told him that there was a man who tried to grab his firearm tucked at his waist (TSN, March 5, 1996, p. 8). As the man was already in the dark place, they did not pursue him anymore. He later learned the identity of the man as Joven Sombrero. He learned from Militante that when they were grappling for the possession of the gun, it went off. He then later advised Militante that they better go back to the barracks which they did.

When they left the place, there was no complaint of anybody being shot. They learned that a person was shot only in the morning when informed by their Station Commander.

Rolando Manalo, a businessman and resident of Sto. Domingo, Nabua, Camarines Sur, was trying to buy a ticket at the gate to be able to enter the dancing (*sic*) hall when he saw Joven Sombrero box Militante and grab the gun of Militante tucked in his waist. Then he heard a gunshot. At the precise time the gun fired, Joven Sombrero had already the possession of the gun. After he heard the gunshot, he and his companion parted ways and he hid near the chapel (TSN, March 19, 1996, p. 3). Then he saw Joven Sombrero go back to the place of the incident carrying two hand grenades. Militante and his companion, however,

already left the place at about 1 to 2 o'clock in the morning. He did not know if somebody was hit when the gun fired.

Sancho Militante, testifying in his behalf, claimed that in the evening of March 12, 1994, together with SPO3 Relativo and SPO2 Blazado, he was at the dancing (*sic*) hall of Barangay Dolorosa, Nabua, Camarines Sur, to maintain peace and order. While there, Barangay Captain Quiniano arrived with a companion who was introduced to him as a comrade in arm and his name was Joven Sombrero. After the introduction, the Barangay Captain left, leaving him and Sombrero together. Sombrero invited him to accompany him inside the dancing (*sic*) hall because he has (*sic*) a table thereat. He refused, however, to accompany him as he was on duty near the gate. As he refused to go with Sombrero inside, Sombrero kept on uttering in this wise, "You are just a policeman and I just come (*sic*) from operation," pushed him away and grabbed his gun which was tucked on his waist. He was able to hold the barrel of the gun while they were grappling for the possession of the gun. It was while grappling for the gun that the gun fired. He was shocked by the shot that the gun dropped to the ground and he picked up the gun. Sombrero ran away to the dark portion of the dancing (*sic*) hall. He tried to chase Sombrero but as people were scampering away in different directions he did not follow Sombrero anymore. After the shot, his companion went out of the dancing (*sic*) hall and SPO3 Relativo asked him what happened. He told Relativo that Joven Sombrero, the man introduced to him by the Barangay Captain as a military man, grabbed his gun because he refused to go with him inside the dancing (*sic*) hall (TSN, March 28, 1996, p. 9). That evening he did not know if somebody was hit by the gunshot. He only learned about it when [he was] told by the Station Commander. He requested the Station Commander to file a case against Joven Sombrero. As Major Moratalla was already transferred to another assignment, he did not know anything more about the complaint (TSN, March 28, 1996, p. 13).

On cross-examination, accused admitted that before they went to the dancing (*sic*) hall he was, together with his co-police officers and Barangay Captain Quiniano, at the shop of Antonio Lorzan drinking beer (TSN, March 28, 1996, p. 15). He knew of the police blotter entry on March 12, 1994 recorded at 2:00 o'clock (*sic*) where he was recorded as the gunwielder only a week after the incident. When the Station Commander, however, came to see him in the morning after the incident, he was already informed that a report was made pointing to him as the culprit in the incident now subject of this case (TSN, March 28, 1996, p. 21).^[3]

The trial court, thereafter, rendered judgment convicting the accused of the crime charged. The *fallo* of the decision reads:

WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of the crime herein charged, as principal thereof, without any mitigating or aggravating circumstance attending the commission of the crime, and consequently sentences accused to an indeterminate penalty ranging from 2 years, 4 months and 1 day of *Prision Correccional*, as minimum,

to 8 years and 1 day of *Prision Mayor*, as maximum, to indemnify Maricris Torriente, thru Ruben Torriente, P72,000.00 as actual damages, P50,000.00 moral damages, and to pay the costs.

SO ORDERED.^[4]

On appeal to the Court of Appeals, the petitioner raised the following issue:

WHETHER SANCHO MILITANTE DREW HIS SERVICE PISTOL WHILE CORNELIO BERMIDO, JR. AND JOVEN SOMBRERO WERE WALKING AWAY FROM HIM OR WHETHER MILITANTE AND SOMBRERO WERE GRAPPLING FOR THE POSSESSION OF THE GUN THAT ACCIDENTALLY WENT OFF AND HIT MARICRIS TORRIENTE.^[5]

On June 4, 2001, the Court of Appeals rendered judgment affirming with modification the decision of the RTC. The *fallo* of the decision reads:

WHEREFORE, this Court MODIFIES the appealed Decision and CONVICTS the accused-appellant Sancho Militante of the Complex Crime of Attempted Homicide with Frustrated Homicide and SENTENCES him to suffer the indeterminate penalty of six (6) years of *prision correccional* as minimum to twelve (12) years of *prision mayor* as maximum and to pay Maricris Torriente P72,000.00 as actual damages, P50,000.00 as moral damages, and costs of the suit.

SO ORDERED.^[6]

The petitioner now comes to this Court *via* a petition for certiorari under Rule 65 of the Rules of Court, praying that the Court rule on the following issues:

1. WHETHER OR NOT THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING A DECISION NOT BASED ON FACTS, EVIDENCE AND THE LAW.
2. WHETHER OR NOT THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING A RESOLUTION NOT BASED ON FACTS, EVIDENCE AND THE LAW.^[7]

The petitioner avers that the respondent failed to prove his guilt of the crime charged. He posits that the trial and appellate courts' reliance on the testimonies of *Barangay Tanod* Ramon Orante and Cornelio Bermido, Jr. is misplaced because their testimonies were frontally inconsistent; hence, barren of probative weight. The petitioner catalogued the inconsistencies as follows:

Prosecution witness, Ramon Orante testified that:

a) He never mentioned Cornelio Bermido, Jr., when allegedly Sancho Militante drew his handgun and pointed it to a man named Sombrero (3-A of SS), yet, Bermido was allegedly with Sombrero when Militante drew his gun and allegedly fired the same (Tsn, pp. 6 & 13, 11/10/94).

b) On direct examination under Tsn, 11/10/94, he testified that it WAS THE FIRST TIME HE SAW MILITANTE (Tsn, p. 3) but on the cross, it WAS