

EN BANC

[G.R. No. 139542, June 21, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
INOCENCIO GONZALEZ, JR., ACCUSED-APPELLANT.**

D E C I S I O N

GONZAGA-REYES, J.:

Many unfortunate tragedies would not have happened if the improvident use of a firearm did not exacerbate a simple altercation over traffic. This is one of them.

On a day intended to pay homage to the dead, a pregnant woman was shot to death in the course of her husband's altercation with the accused-appellant and his son along the Garden of Remembrance within the Loyola Memorial Park in Marikina. The trial court found the accused guilty of the complex crime of murder and two counts of frustrated murder and accordingly sentenced him to death. This case is before us on automatic review.

The details of what actually transpired in the few seconds immediately preceding the shooting are controverted by both parties but the events leading to this tragedy are not disputed.

In the afternoon of October 31, 1998 at about 2:30 p.m. both the families of the private complainant Noel Andres and that of the accused-appellant Inocencio Gonzalez were on their way to the exit of the Loyola Memorial Park. The appellant was driving a white Isuzu Esteem with his grandson and three housemaids, while the private complainant was driving a maroon Toyota FX with his pregnant wife Feliber Andres, his two year old son, Kenneth, his nephew Kevin and his sister-in-law, Francar Valdez. At the intersection near the Garden of Remembrance, while the accused-appellant Gonzalez was turning left towards the exit and the complainant Noel Andres was headed straight along the road to the exit their two vehicles almost collided. Noel Andres was able to timely step on the brakes. The appellant continued driving along his way while Noel Andres drove behind the appellant's vehicle for some time and cut him off when he found the opportunity to do so.^[1] Noel Andres then got out of his vehicle and knocked on the appellant's car window.

^[2] This is as far as their versions of the incident coincide.

The prosecution's version of the incident is that Noel Andres calmly told the appellant to be careful with his driving and informed the latter that he, Andres, is with his family and to this Gonzalez allegedly replied, "Accidents are accidents, what's your problem." Andres stated that he saw the appellant turning red in anger so he decided to go back to his vehicle when he was blocked by the appellant's son who said, "Anong problema mo sa erpat ko." Andres testified that he felt threatened and so he immediately boarded his vehicle, sat at the driver's seat, closed the door, and partially opened the car window just wide enough to talk back

to appellant's son, Dino. Suddenly, one of his passengers said "Binaril kami". He turned to his wife Feliber Andres and saw her bloodied and unconscious. He turned around and saw his son Kenneth and nephew Kevin were also wounded. Andres admitted in court that he and Dino were shouting at each other so that he did not hear the shot. Andres then got out of his vehicle to warn the appellant not to flee. He then took the wounded members of his family to the exit where there was an ambulance standing by. The three were then taken to the Sta. Monica Hospital and were later transferred to the Quezon City Medical Center.

The defense's version of the incident is that Andres cut the appellant's path by positioning his FX obliquely along the appellant's lane from the latter's left side. Andres then got out of his vehicle, stood beside the appellant's car window, and repeatedly cursed the appellant, "Putang ina mo, ang tanda-tanda mo na hindi ka pa marunong magmaneho. Ang bobo-bobo mo."^[3] The appellant stayed inside his car and allegedly replied, "Pasensiya ka na hindi kita nakita, nasilaw ako. Aksidente lang." The appellant Gonzalez and another witness for the defense, Quidic, testified that Noel Andres went back to his vehicle to move it in such a way that it is straight in front of the appellant's car. Andres allegedly got out of his vehicle again and continued shouting and cursing at the appellant.^[4] Dino, the appellant's son, who rode in another vehicle decided to go back when he did not see his father's car behind him. When Dino arrived at the scene he confronted Andres and the two had an altercation. Both Dino and the appellant stated that Andres remained outside his vehicle during the altercation with Dino. When Andres suddenly reached for something inside his vehicle, Dino froze on the spot where he stood. This prompted the appellant to get his gun from the glove compartment and feeling that his son was threatened he got out of his car ready to shoot. When he saw that Andres did not have a weapon he put down his hand holding the gun. This is when the appellant's daughter Trisha who was riding in Dino's car arrived at the scene, walked past Dino and Andres, and pushed the appellant away. She hugged her father and in the process held his hand holding the gun. The appellant tried to free his hand and with Trisha's substantial body weight pushing against him the appellant lost his balance and the gun accidentally fired. The accused stated that he did not know he shot somebody until the private complainant's sister-in-law, Francar Valdez, got out of the vehicle carrying a bloodied small boy. The defense claims that the appellant did not try to flee and even told the complainant's sister-in-law to take the wounded to the hospital.

On November 4, 1998 an Information for the complex crime of Murder, Double Frustrated Murder and Attempted Murder was filed against herein accused-appellant:

"That on or about the 31st day of October 1998, in the city of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously with intent to kill, attack, assault and employ personal violence by means of treachery and abuse of superior strength upon the person of Noel Andres y Tomas, by then and there shooting him with a Glock cal. 9mm pistol but instead hitting one Feliber Andres y Ordoño, on the left back portion of her head, thereby inflicting upon her serious and mortal wound which directly caused her death, as well as hitting John Kenneth Andres y

Ordoño and Kevin Valdez y Ordoño physical injuries which ordinarily would have caused their death, thus performing all the acts of execution which would have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of some cause or causes, independent of their will, that is, the timely and able medical assistance rendered to John Kenneth Andres y Ordoño and Kevin Valdez y Ordoño to their damage and prejudice as well as to the damage and prejudice of the heirs of Feliber Andres y Ordoño."

On arraignment the accused-appellant pleaded "not guilty" to the crimes charged.

The case records show that Feliber Andres, the wife of Noel Andres did not die instantaneously. She lived to give birth to a baby girl^[5] by caesarian section and died the following morning on November 1, 1998. The Autopsy Report^[6] states:

"FINDINGS: Fairly nourished, fairly developed female cadaver, with post mortem lividity. Conjunctivae are pale. Lips and nail beds are cyanotic. Surgical incisions were noted at left temporo-parietal region. Surgical incisions is also noted at the abdominal region secondary to a caesarian section.

HEAD: (1) gunshot wound, point of entry, left fronto-temporal region, measuring 1 by 0.9 cm, 9 cm from the anterior midline, with a uniform abraded collar measuring 0.2 cm., directed posteriorwards, slightly downwards, and medialwards, fracturing the frontal, and left temporal bones, lacerating the left cerebral hemisphere, with a deformed slug fragment embedded and recovered at the posterior lobe of the left cerebral hemisphere. (2) hematoma, left orbital region, measuring 4.5 by 2 cm, 4 cm from the anterior midline. There are subdural and subarachnoidal hemorrhages. Stomach contains 1 ½ glassful of partially digested food particles mostly rice and meaty material.

CONCLUSION: Cause of death is gunshot wound on the head."

Kenneth and Kevin were treated for extraction of metallic fragments on their faces. They were discharged from the hospital six days later or on November 6, 1998.

On June 25, 1999 the trial court rendered judgement finding that the shooting was attended by the qualifying circumstance of treachery and held the appellant guilty of the complex crime of murder for the death of Feliber Andres and for two counts of frustrated murder for the injuries sustained by Kenneth Andres and Kevin Valdez and sentenced the appellant to the maximum of the imposable penalty which is death. The trial court held:

"Beforehand, the Court takes note of the judicial admissions on the verbal declarations of the accused that the court 'a quo' has jurisdiction over the case; that he owns the black Gluck 9 mm. automatic pistol; that the said gun will never fire even if he drops it; that only one bullet was fired from his gun; and that the victim Feliber Andres is already dead.

With this exegesis and the declarations in open court of the eyewitness of both the prosecution and some of the defense, there is no real dispute on the antecedent facts showing that the accused fired on Noel Andres but instead hit and caused the fatal injuries to the victims John Kenneth Andres, Kevin Valdez and Feliber Andres resulting to the ultimate death of the latter. The court takes further judicial admissions of the accused made in their memorandum demonstrating the existence of five (5) sequences of events leading to the death of Feliber Andres and the wounding of John Kenneth Andres and Kevin Valdez which are as follows: First is when Noel Andres overtook the car driven of the accused and cut cross his path; Second is when Noel Andres alighted from his vehicle and confronted Inocencio; Third is when Noel had an argument with Dino Gonzalez, the son of the accused; Forth is when, Inocencio seeing his son having confrontation with Noel, got his gun to protect Dino; and Fifth is when Inocencio had a struggle with his daughter. Trisha Gonzalez, who tried to reach for the gun and as a result of which Inocencio lost his balance and as he was falling backward to his side, his right arm holding the gun hit the rear window of the Tamaraw FX van and the gun accidentally went off hitting the victim, who were all then inside the van.

The court likewise take judicial notice on the feature of the automatic pistol used in this case which is capable of unquestionable demonstration or ought to be known to judges because of their judicial functions. Practically, the stages before an automatic firearm would be capable of firing are as follows: 1) the loading of a bullet into the chamber of the gun; 2) the cocking of the hammer, if uncocked; 3) the releasing of the safety pin; 4) the pressing of the trigger to unleash the hammer so that the firing pin will hit the cartridge to propel the bullet out to hit the target. Realistically, it demonstrates that a gun will not fire even if the bullet is loaded in its chamber if the hammer is uncocked; or even if cocked if the safety pin is engaged; or even if the safety pin is disengaged if the trigger will not be pressed. However, even if the gun is fired if it is not aimed and leveled to the target, the purpose of firing it shall not be achieved. Contrarily, once a gun is drawn against a person, the means methods and forms employed for its execution is already conceived. And once it is tended directly and specifically to insure its execution, it consequently produces the conscious and deliberate intention. Finally if all the acts of execution had been effectively done without risk on the part of the offender arising from any defense coming from the offended party, treachery results. In brief, there is treachery when the offender commits any crime against persons, employing means, methods and forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from any defense which the offended party might make (People vs. Mesa 276 SCRA 407; People vs. Carlos Patrolla, Jr. G. R. No. 112445, March 7, 1996). To appreciate treachery two (2) conditions must be present, to wit: 1) the employment of means of execution that give the person attacked no opportunity to defend himself or retaliate; and 2) the means of execution were deliberately or consciously adopted. (People vs. Azugue, 268 SCRA 711; People vs. Peña, G. R. No. 116022, July 1, 1998, p. 1)

In the case at bar and guided with the above-quoted doctrinal cases, logically, the accused is positive of the crime charged against him. When he alighted with a drawn gun to protect his son and released all the safety measures of his gun as he fired and missed at Noel who was then unarmed, but instead hit Kevin Valdez, John Kenneth Andres and Feliber Andres which resulted to the death of the latter, demonstrate that the accused has executed the two (2) conditions to generate treachery enough to qualify the crime committed to murder."

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"WHEREFORE, foregoing premises considered, the accused Inocencio Gonzalez, Jr., y Esquivel is hereby found guilty beyond reasonable doubt of the complex crime of Murder with Double Frustrated Murder and Attempted Murder penalized under Art. 248, as amended by Republic Act No. 7659 in relation to Article 48 of the Revised Penal Code and is sentenced to suffer the maximum penalty of Death by lethal injection.

The accused is further ordered to pay the following civil liabilities:

1. To the private complainant Noel Andres:

a) the amount of P50,000.00 as indemnity for the death of Feliber Andres;

b) the amount of P3,363,663.60 as indemnity for the loss of earning capacity of the deceased Feliber Andres;

c) the amount of P98,384.19 as funeral expenses;

d) the amount of P271,800.56 for the hospitalization expenses incurred for the injuries sustained by the deceased Feliber Andres and the amount of P23,622.58 representing the expenses for the untimely delivery of the child Ma. Clarisse Andres;

e) the amount of P51,566.00 representing the hospitalization expenses for the injuries sustained by the victim John Kenneth Andres;

f) the amount of P150,000.00 as moral damages suffered for the untimely death of his wife Feliber Andres and for the injuries caused to his son John Kenneth Andres;

g) the amount of P50,000.00 as and by way of attorney's fees and a fee of P2,000.00 per appearance; and

h) the costs of the suit.

2. To the private complainant Nicasio Valdez:

a) the amount of P73,824.75 as actual damages for the injuries sustained by the victim Kevin Valdez; and